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code of federal regulations

Transportation

Item # 572-C

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49

PARTS 1000 TO 1199

Revised as of October 1, 1981

022-003-94699-3

code of federal regulations

Transportation

49

PARTS 1000 TO 1199

Revised as of October 1, 1981

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Cite this Code **CFR**

thus: **49 CFR 1000.1**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

THIS TITLE

Title 49—TRANSPORTATION is composed of eight volumes. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1981.

The parts in these volumes are arranged in the following order: Parts 1-99, Subtitle A—Office of the Secretary of Transportation; Parts 100-177 and Parts 178-199, Chapter I—Research and Special Programs Administration (DOT); Parts 200-399, Chapter II—Federal Railroad Administration (DOT), and Chapter III—Federal Highway Administration (DOT); Parts 400-999, Chapter IV—Coast Guard (DOT), Chapter V—National Highway Traffic Safety Administration (DOT), Chapter VI—Urban Mass Transportation Administration (DOT), Chapter VIII—National Transportation Safety Board, and Chapter IX—United States Railway Association; Parts 1000-1199, Parts 1200-1299, and Part 1300 to End, all Chapter X—Interstate Commerce Commission.

In the volume containing Parts 100-177 see § 172.101 for the Hazardous Materials Table. Parts 200-399 of this title contains the Federal Motor Carrier Safety Regulations, and a Subject Index to these regulations follows Chapter III. The Federal Motor Vehicle Safety Standards appear in Part 571.

For this volume Linda A. Rice-Johnston was Chief Editor, assisted by Alomha S. Rowland. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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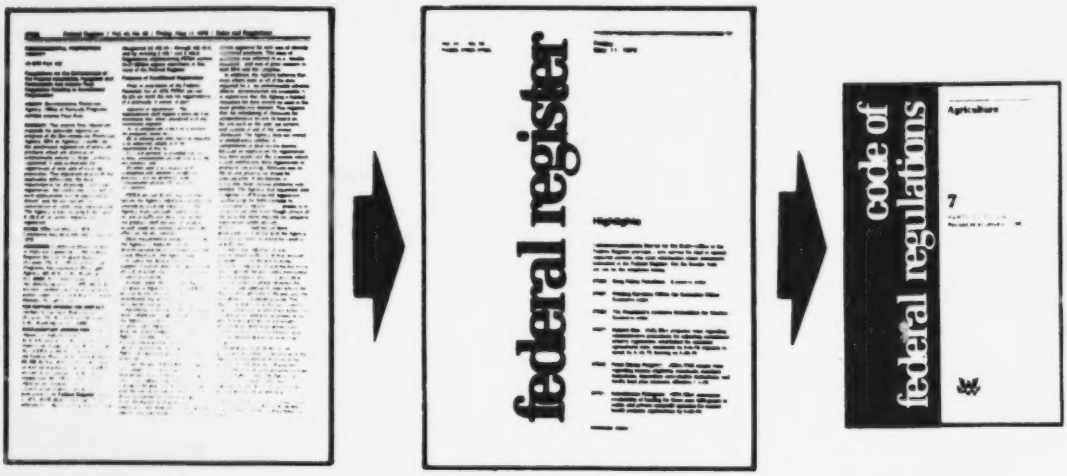

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(This book contains Parts 1000 to 1199)

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Subpart A—General

SOURCE: 32 FR 20004, Dec. 20, 1967, unless otherwise noted.

§ 1000.1 Description of official seal.

(a) *Description.* A constellation of 13 stars above an American bald eagle with wings displayed and inverted holding in his dexter talon an olive branch and in his sinister a bundle of seven arrows, in his beak a scroll inscribed "E Pluribus Unum," bearing a shield paleways of 13 pieces argent and gules, a chief azure; all within an encircling inscription "Interstate Commerce Commission, 1887," and a decorative outer border.

(b) *Colors.* When illustrated in color, the background is National Flag blue, the eagle and olive branch proper, and the arrows, stars, scroll and encircling inscription white. The motto is of the same blue as the background, and the blue of the shield is a medium shade. The outer border of the seal and the edge of the shield are gold color.

(Sec. 12, 24 Stat. 383 as amended, sec. 17, 40 Stat. 270, as amended; 49 U.S.C. 12, 17)

§ 1000.5 Credentials required by special agents, accountants, and examiners.

(a) Carrier records and property subject to inspection and examination.

(1) Persons appointed as special agents, accountants, and examiners of the Commission are authorized to enter upon, to inspect and examine any and all lands, buildings, and equipment of carriers and other persons subject to the Interstate Commerce Act and related Acts, and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of carriers, and other persons subject to the Act.

(2) Inspection or copying authority with respect to persons who furnish railroad cars or protective service against heat or cold to or on behalf of a carrier or an express company, shall be limited to accounts, books, records, memoranda, correspondence, and other documents which pertain or relate to cars or protective service.

(3) Carriers and other persons subject to the Act shall submit their accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, and such carriers and other persons shall submit their lands, buildings, and equipment for examination and inspection, to any special agent, accountant, or examiner of the Commission upon demand and the display of a Commission credential identifying him as a special agent, accountant, or examiner.

(b) Definition of "other persons subject to the Act." The term "other persons subject to the Act," as used in this section, includes:

(1) Brokers subject to Part II of the Interstate Commerce Act, freight forwarders subject to Part IV of the Act, lessors of carrier operating rights, receivers, trustees, administrators, executors, and other persons having custody, possession, or control of barrier operations or the business of other persons subject to the Act;

(2) Persons who furnish railroad cars or protective service against heat or cold to or on behalf of railroads or express companies (but only with respect to records pertaining to the cards or protective services to be furnished);

(3) Associations of carriers or brokers subject to the Act which perform any service or engage in any activities in connection with any traffic, transportation, or facilities subject to the Act;

(4) And, to the extent specified in orders of the Commission issued under section 5 of the Act, persons controlling two or more carriers.

(c) Definition of special agents, accountants, and examiners. The duties of the following described employees or positions, and such other employees of the Commission as the Chairman shall specify in writing, include those of special agent, accountant or examiner, and they are hereby authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment in the same manner and to the same extent as special agents, accountants, and examiners:

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Vice Chairman
Commissioners
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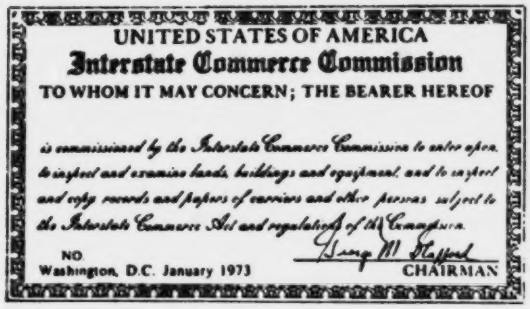
Public Information Officer and Assistant
Chairpersons of Employee Boards
Regional Directors
Assistant and Associate Regional Directors
Regional Counsel
Assistant Regional Counsel
Branch Chiefs, Field Offices
Trial Attorneys
Transportation Assistants and Consumer Specialists
Transportation Industry Analysts
Railroad Car Service Agents
District Supervisors
Auditors and Financial Analysts
Economists
Investigators
Administrative Law Judges

(d) Facsimile of the Commission's credentials:


UNITED STATES OF AMERICA
Interstate Commerce Commission
TO WHOM IT MAY CONCERN; THE BEARER HEREOF
is commissioned by the Interstate Commerce Commission to enter upon, to inspect and examine lands, buildings and equipment, and to inspect and copy records and papers of carriers and other persons subject to the Interstate Commerce Act and regulations of the Commission.
NO.
Washington, D.C. January 1973
CHAIRMAN

(Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386, as amended, sec. 25, 41 Stat. 498, as amended, sec. 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec. 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012; 49 U.S.C. 11144(b); 5 U.S.C. 553)

[38 FR 7229, Mar. 19, 1973, as amended at 45 FR 80292, Dec. 4, 1980; 46 FR 30502, June 9, 1981]

§ 1000.10 Availability of statements of policy, interpretations, and other matters not required to be published in the Federal Register.

(a) The Interstate Commerce Commission, in performing its duties under the Interstate Commerce Act, frequently formulates and adopts statements of general policy, or interpretations of general applicability, and other matters not required to be published in the FEDERAL REGISTER in rendering decisions in proceedings involving the operating rights, financial structures, or rates and practices of brokers, electric railways, express companies, freight forwarders, motor carriers, pipelines, private car companies, rail carriers, and water carriers. Because such statements of policy and interpretations of general applicability are scattered throughout more than 320,000 pages in over 400 volumes of Commission reports and because such policies and interpretations must be revised or repealed from time to time as required by changing technology and economic conditions, it is not feasible, and is wholly impractical, to state them separately and publish them in the FEDERAL REGISTER. Further, to be fully understood, such statements of general policy or interpretations of general applicability must be read in context in the Commission's reports where they are explained, revised, or repealed in relation to the factual situations to which they are applicable. Notice is hereby given that those portions of the printed reports of decisions of the Interstate Commerce Commission which contain statements of general policy or interpretations of general applicability are digested, arranged topically, and indexed both in the multivolume set "Interstate Commerce Acts Annotated" (supplemented monthly by the "Advance Bulletin of Interstate Commerce Acts Annotated") and in the index-digests in the backs of bound volumes of Interstate Commerce Commission reports. The multivolume set, "Interstate Commerce Acts Annotated" and the three series of Interstate Commerce Commission reports (i.e., I.C.C., M.C.C. and Val. Rep.) are published and sold by the Government Printing Office, and are sent free to Depository Libraries (44 U.S.C. 82), which include all State libraries, two libraries in each congressional district, the libraries of land grant colleges, and other libraries. Copies are also available for public examination in the Interstate Commerce Commission Library in Washington, D.C. The indexes in these publications are maintained in compliance with the provision in 5 United States Code 552(a)(2). The "Advance Bulletin of Interstate Commerce Acts Annotated" and recent reports, which have not yet been included in published indexes, are available upon request from the Office of the Secretary, Interstate Commerce Commission.

(b) Because of the large volume of reports, it is the policy of the Commission to print for publication in bound volumes only reports of those cases decided by the entire Commission or by a division thereof and more significant reports of employee boards. With few exceptions, reports and orders of employee boards are duplicated ("no print reports and orders") and distributed to the parties and made available to the press. From time to time "no print reports and orders" are cited as precedents in other cases. Therefore, notice is hereby given that duplicated "no print reports and orders", are indexed by docket number and title, and filed by subject matter and are availa-

ble for public inspection in the Section of Reference Services of the Commission in Washington, D.C. These indexes and files are maintained in compliance with the provision in 5 United States Code 552(a)(2). Persons outside Washington, D.C., can obtain information about, or copies of, such duplicated reports by writing to the Secretary of the Commission.

(Sec. 12, 24 Stat. 383, as amended, 49 U.S.C. 12; 81 Stat. 54, 5 U.S.C. 552)

Subpart B—Canons of Conduct

AUTHORITY: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386 as amend, sec. 25, 41 Stat. 498, as amended, sec 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec, 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

SOURCE: 44 FR 4610, Jan. 22, 1979, unless otherwise noted.

§ 1000.735–11 General standard of conduct.

Members and employees of the Commission hold a public trust. To honor that trust, they must maintain unusually high standards of honesty, integrity, and impartiality in all aspects of their official conduct. They shall perform their duties fairly and expeditiously and with a view to carrying out the national transportation policy. They shall be courteous and prompt in serving the public.

§ 1000.735–12 Interpretation and advisory service.

(a) The Commission's General Counsel shall be the Ethics Counselor. The Director of Personnel shall be the principal Deputy Ethics Counselor. The Ethics Counselor, with the approval of the Chairman, shall designate additional Deputy Ethics Counselors as he or she deems necessary or appropriate to carry out his or her responsibilities under these Canons.

(b) On January 1 and June 30 of each year, the Ethics Counselor shall report to the Commission on the operation of the Canons and guidelines with any recommendations the Ethics Counselor deems advisable.

(c) The Director of Personnel shall furnish copies of the Canons of Conduct and guidelines to each new member and new employee upon his or her entrance on duty. The Ethics Counselor shall annually, or as circumstances may warrant, bring to the attention of each member or employee the Canons of Conduct and guidelines. The Ethics Counselor shall inform all members and employees of the names of the Deputy Ethics Counselors and of the procedures for seeking advice concerning the interpretation and application of these Canons.

§ 1000.735–13 Prohibited financial interests.

Members and employees shall not be employed by, or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits: (a) Any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act, (b) any interest in any company that (1) owns or controls and (2) has more than two percent of its assets invested in or derives more than two percent of its income from a for-hire transportation company whether or not subject to the Interstate Commerce Act, and (c) any interest in any company, mutual fund, or other enterprise which in turn has an interest of more than ten percent of its assets invested in or derives more than ten percent of its income from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

GUIDELINES

The two-percent and ten-percent limitations of (b) and (c) should be interpreted as applying only to direct holdings of a company, mutual fund, or other enterprise, and not to indirect holdings. In determining whether these limitations are applicable, members and employees may rely on the most recent financial statement issued by the enterprise to security holders.

Where a previously-proper holding of a member or employee becomes prohibited because of the enterprise's acquisition of an interest in a for-hire transportation company, the holding must be disposed of within nine months.

The financial interests prohibited by this section are absolute unless a waiver, based

on serious financial hardship or remoteness of interest, is obtained from the Ethics Counselor.

§ 1000.735–14 Disqualifying interests.

(a) Members and employees shall not participate in any matter in which they have a substantial pecuniary interest or in which their impartiality might reasonably be questioned.

(b) Once members or employees have been disqualified from participating in any matter, they shall not engage in any discussion or be present during any action relating to the matter.

GUIDELINES

Members and employees should disqualify themselves whenever, in their own judgment, a disqualifying interest exists. If an employee's disqualification to participate in a matter is questioned by someone else and the employee declines to disqualify himself or herself, the final determination as to whether the employee should be disqualified will be made by the Chairman. A member is the sole judge of his or her own disqualification.

A "substantial pecuniary interest" should be interpreted to include any situation in which members or employees, or their parents, spouses, children, or other relatives (including in-laws) residing in the same household, have a direct or indirect financial interest that could be materially affected.

Matters in which members or employees' "impartiality might reasonably be questioned" should be interpreted to include, among other things, any matter in which they or their parents, spouses, children, or other relatives (including in-laws) residing in the same household have a past or present association with a party or a representative of a party affected by the matter which reasonably appears to affect their decision.

§ 1000.735–15 Gifts, entertainment, and favors.

(a) Members and employees of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, entertainment, favor, loan, or any other thing of monetary value, from any person, association, or group, that: (1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Commission; or (2) conducts operations or activities that are subject to regulation by the Commission; or (3) has interests which may be substantially affected by the member's or employee's performance or nonperformance of his or her official duty; or (4) is in any way attempting to affect the member's or employee's official actions. The requirements of this paragraph do not apply to: (i) Obvious family or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors; (ii) acceptance of food or refreshments of nominal value on infrequent occasions in the course of a luncheon, dinner, or other meeting or an inspection tour where a member or employee may properly be in attendance; (iii) acceptance of unsolicited advertising or promotional material of nominal intrinsic value, such as pens, pencils, note pads, calendars, and other similar items; or (iv) acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of members or employees, such as home mortgage loans.

(b) Members and employees shall avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of: (1) Using public office for private gain; (2) giving preferential treatment to any person; (3) impeding Commission efficiency or economy; (4) losing complete independence or impartiality; (5) making a Commission decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the Commission.

(c) Members and employees shall not solicit a contribution from any other member or employee, or make a donation for a gift to a member or employee in a superior official position, or accept gifts from members or employees receiving less salary than themselves. This paragraph does not prohibit a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(d) Members and employees shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

GUIDELINES

(1) This canon is designed to prohibit conduct which gives the appearance of or creates an actual conflict of interest for members or employees.

The term "gift, gratuity, entertainment, favor, loan, or any other thing of monetary value" includes such things as invitations to lunches, dinners, parties, or other social events; tickets to cultural or sporting events; free use of facilities such as hotels or other accommodations; free transportation; free use of club privileges or similar facilities.

The persons, associations, and groups from whom gifts and other things of value may not be accepted include, but are not limited to, regulated entities, associations of regulated entities, and individuals or firms whose work involves to a substantial extent the representation of regulated entities.

A policy favoring the prohibitions of this canon rather than stretching the exceptions is intended.

(2) Members and employees considering possible proposals for future employment with persons, associations, or groups described in the canon and these guidelines may accept reimbursement for reasonable travel and subsistence expenses actually incurred during employment negotiations provided they promptly report the relevant details concerning the reimbursement to the Director of Personnel, who shall treat the reports as strictly confidential. At a minimum, the following information should be reported: name and address of prospective employer; dates of any travel and hotel accommodations; statement of amount reimbursed, itemized to show travel, lodging, and meals. These reports will be kept strictly confidential and will not be considered in any personnel actions affecting the persons filing them, unless they show evidence of improper conduct.

While this guideline permits members and employees to accept reimbursement for reasonable expenses related to *bona fide* employment negotiations, it should not under any circumstances be interpreted to permit reimbursement for lavish or excessive personal expenses. Members and employees are also reminded of the requirements of Canon 18 governing withdrawal from participation in matters affecting a prospective employer both during and after negotiations.

(3) The "obvious family or personal relationship" exception permits the exchange of gifts and entertainment where it is clear that the offering is prompted by the personal of family relationship. If the donor's business interests might be the motivating factor behind the gift or entertainment, the member or employee should carefully consider the circumstances surrounding the offer before accepting. The purpose of this exception is to avoid interfering with a member's or employee's personal relationships which unrelated to his or her job.

A gift or entertainment from a relative is mormally permissible, unless it appears that it is motivated by the relative's business interests. In the case of personal friends who would otherwise be forbidden donors, members and employees should carefully consider the circumstances surrounding gifts and entertainment and should take reasonable steps to avoid the appearance of a conflict of interest. For example, members and employees are free to meet such personal friends for lunch or dinner but to avoid the appearance of a conflict of interest should pay their own checks. Similarly, members and employees may accept gifts from such personal friends on a special occasion, such as a birthday, wedding, or Christmas, if such gifts are normally exchanged by them. But members and employees should consider whether the donor would have offered the item of value if he or she were in a different business and if the recipient were not a Commission employee. If there is doubt concerning the application of the exception, the gift should not be accepted.

(4) Exception (ii) applies to those events at which members and employees may properly be in attendance.

Members may attend any event which in their own opinion will benefit the Commission and assist in performing their official duties, as long as attendance will not reflect adversely on their impartiality. In deciding whether to attend an event members should carefully consider: (1) The identity of the sponsor, (2) the location, (3) the duration, (4) the purpose, and (5) the persons expected to attend.

Employees may properly attend events sponsored by a person or entity subject to Commission regulation if the event can reasonably be classified as a business meeting involving a formal program designed to be informative or educational. Attendance at events of this nature is subject to approval by the head of the Bureau or Office involved. Where an event is primarily social in character, employees may attend only where their attendance is ruled to be proper by the Chairman or the Ethics Counselor. Attendance will be authorized only if it will further the interests of and provide benefits to the Commission, in light of the employee's job duties and level of responsibility.

Attendance at primarily social events sponsored by a broadly-based group with members from many different organizations or companies, such as the ICC Practitioners, and attended by large numbers of persons in addition to Commission members or employees, will normally be authorized, unless the circumstances create an appearance of impropriety. Attendance at events sponsored by one or a few companies, or by

other narrowly-based groups, or at events to which only Commission members and employees are invited, will be closely scrutinized; attendance will be authorized only if there is a clear benefit to the Commission and the public interest.

When authorizing an employee to attend an event which is sponsored by a person or entity subject to Commission regulation and which is to last more than one day, the approving official will designate the period of time the employee may be in attendance, based on his or her judgment as to which segments of the event are relevant to the employee's responsibilities. An employee authorized to attend an out-of-town event may remain at the event for a longer period only upon the express approval of his or her Bureau or Office head. An employee's time away from the office beyond that spent attending that portion of an event which is relevant to the employee's responsibilities will be charged to annual leave.

When attending a meeting or other event, members and employees may accept a plaque or similar memento in honor of their appearance and any item of nominal value given to all participants.

(5) The phrase "luncheon, dinner, or other meeting," as used in exception (ii), refers primarily to working sessions that are integrated with a lunch, dinner, or refreshments. For example, an employee in attendance at a day-long seminar that includes a luncheon or dinner as part of the program, or an employee speaking to a luncheon or dinner gathering, may accept the accompanying meal.

The exception also extends to a social hour or dinner event connected with an authorized working session if the social hour or meal is not significantly removed in time from the working session and would not be considered lavish entertainment. For example, an employee scheduled to address a convention meeting or to participate in a panel discussion ordinarily may attend a related social hour sponsored by the host organization on the evening before or the evening after the working meeting, if it is reasonable to expect that attendance may lead to business-related discussions that will further the purposes sought to be served by the employee's participation in the working portion of the conference.

Employees may not otherwise accept invitations to primarily social gatherings sponsored by entities within the class identified in the canon unless authorized to do so by the Chairman or the Ethics Counselor.

The phrase "nominal value," as used in exception (ii), does not lend itself to precise quantification. It may have a different meaning in different situations. In some circumstances, food and refreshments served as part of a working lunch may properly be viewed as of nominal value if the cost is less than ten dollars. The nominal value limitation in that context is designed to preclude lavish meals or entertainment. In connection with an inspection tour, by contrast, only refreshments worth about one dollar or less—the equivalent, for example, of coffee and a doughnut—may ordinarily be viewed as of nominal value. The purpose of the nominal value limitation in the inspection tour context is to allow an employee to accept normal social courtesies but not to accept more substantial food or refreshment that is unwarranted in light of the circumstances.

(6) The "advertising or promotional material" exception is intended to include only inexpensive items that businesses commonly distribute to large numbers of persons. While acceptance of such items is permitted, their display in Commission offices is not encouraged, and discretion should be exercised so that an appearance of impropriety is not created. Candy, fruit, alcoholic beverages, and similar items do not ordinarily fall within this exception.

(7) Although the canon allows members and employees to accept some gifts, it does not *require* acceptance of anything. Members and employees may always decline gifts that the canon permits them to accept.

(8) Subsection (c) does not prohibit the voluntary exchange of inexpensive gifts on occasions such as birthdays or holidays.

§ 1000.735–16 Disclosure and misuse of information.

Members and employees of the Commission shall not use for personal gain or disclose to unauthorized persons confidential information not available to the general public. They shall not disclose or release official information prior to the time authorized for its release.

GUIDELINES

"Confidential information not available to the general public" includes proprietary information submitted to the Commission with the reasonable expectation that it will be treated confidentially. "Official information" includes decisional orders and other agency actions that have not yet been served or otherwise officially released to the public.

This canon prohibits disclosure or release of information in either category to persons not employed by the Commission or employees whose official responsibilities do not require access to the information. The Chairman of the Commission may authorize disclosure or release of confidential information or official information prior to the official release date if he or she determines,

in individual cases or in an appropriate class of cases, that such disclosure or release would further important interests of the Commission or the public and would neither significantly compromise the rights of any person nor allow any person improperly to use such information for private financial gain.

§ 1000.735–17 Outside employment and other activity.

(a) Members and employees shall not engage in any outside employment or other outside activity, including teaching, lecturing, writing, consultation, discussion, or appearance, with or without compensation, in circumstances which might: (1) Reasonably result in a conflict of interest or an apparent conflict of interest between their private interests and their official Government duties and responsibilities, or (2) interfere with the efficient performance of their official duties.

(b) Advance authorization for employees to engage in outside employment or other outside activity described in paragraph (a) of this section shall, in any event, be obtained from the Director of Personnel, via supervising channels. See Manual—Administration 22-781 and 24-311.

(c) Members shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas that have not become part of the body of public information.

GUIDELINES

Outside employment will not be authorized unless it is confined strictly to nonworking hours and will not interfere with employees' performance of their official duties.

§ 1000.735–18 Future employment.

If a member or employee of the Commission entertains a proposal for future employment by any entity subject to regulation by the Commission or by associations or representatives of such entities, the member or employee must refrain from participating in the decision or disposition of any matter in which the person, association, or representative is known to have a direct or substantial interest both during such negotiations and for a period of six months after termination of negotiations. If employment is accepted, the member or employee must continue to refrain from participating in such matters until he or she severs the connection with the Commission.

§ 1000.735–19 Ex parte communication.

Members and employees of the Commission must conform to the standards adopted by the Commission reprinted in Appendix C of the Rules of Practice of the Commission (Part 1100 of this chapter).

§ 1000.735–20 Use of Federal property.

Members and employees of the Commission shall not directly or indirectly use, or allow the use of, Federal property of any kind, including property leased to the Government, for other than officially approved activities. They also have a positive duty and responsibility to protect and conserve all Federal property, which is entrusted or issued to them.

§ 1000.735.–21 Use of intoxicants.

Members and employees of the Commission shall not use alcohol, drugs, or other intoxicants so as to impede the discharge of their official duties.

§ 1000.735–22 Prohibited conduct.

Members and employees shall not engage in criminal or dishonest conduct, conduct that significantly interferes with their effective performance of official responsibilities, or conduct that is materially incompatible with their official position.

GUIDELINES

This canon is intended to prohibit unlawful or dishonest conduct. It will not be construed to prohibit legitimate private conduct or to prevent members or employees from exercising rights guaranteed by the laws and Constitution of the United States.

§ 1000.735–23 Intermediaries.

Members and employees of the Commission shall not recommend or suggest the use of any nongovernment in-

termediary (individual, firm, corporation, or other entity) offering any service as consultant, agency representative, attorney, expeditor, or specialist for the purpose of assisting in any negotiations, transactions, or other business with or before this Commission. However, making available general reference lists of non-governmental intermediaries, the use of which is authorized by the Secretary of the Commission, will not be deemed to violate this section.

GUIDELINES

"General reference lists" refers only to such lists of licensed attorneys and registered practitioners as may be compiled and maintained by a state or local bar association, the ICC Practitioners Association, the Motor Carrier Lawyers Association, and similar organizations. Lists compiled by employees on the basis of their own knowledge or experience are not "general reference lists" within the meaning of the Canon.

§ 1000.735–24 Gambling, betting, and lotteries.

Members and employees shall not participate, while on federally owned or leased property or while on duty for the Commission, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip, ticket, chance, voice, share, or any similar item.

§ 1000.735–25 Miscellaneous statutory provisions.

Members and employees shall acquaint themselves with the statutory provisions described in Appendix II to this subpart, which relate to ethical and other conduct as a member and employee of the Commission and the Government.

§ 1000.735–26 Statements of employment and financial interests.

(a) All employees in the positions specified in Appendix I to this subpart shall submit to the Director of Personnel within 30 days after their entrance on duty a confidential statement of employment and financial interests on ICC Form No. 1164. Pursuant to the grievance procedures enumerated in the Manual-Administration 22–725, employees so specified may file and have reviewed a complaint that the positions have been improperly designated as requiring the submission of a statement of employment and financial interests.

(b) Any changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. Where no changes or additions occur, a negative report is required.

GUIDELINES

The financial statements required by this section are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of financial statements by employees does not permit them or any other person to participate in matters in which participation is prohibited by law, order, or regulation. Notwithstanding the filing of these statement, employees shall at all times avoid acquiring financial interests or taking other actions that would result in a violation of the conflict-of-interest provisions of 18 U.S.C. 208 or these Canons of Conduct.

In the event that any required information, including holdings placed in trust, is not known to the employee but is known to another person, the employee should request that other person to submit the information on his or her behalf and should report the request in Part IV of ICC Form 1164.

The interest, if any, of a spouse, minor child, or any relative (including in-laws) residing in an employee's immediate household shall be reported as his or her interest. If that information is to be supplied by others, this should be indicated in Part IV of ICC Form 1164. Information will not be required if the reporting individual certifies that he or she has no knowledge of the required information, has made every reasonable effort to obtain it, and neither derives nor expects to derive any benefit from the financial interests involved.

Employees are not required to submit any information relating to their connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civil, or political organization or any similar organization not conducted as a business enterprise or engaged in the ownership or operation of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from contracts with the Government are

deemed "business enterprises" for reporting purposes and should be included.

Any person designated to serve in an "acting" status in one of the positions listed in Appendix I shall file a financial statement in accordance with this canon within 30 days after serving in an "acting" capacity for 30 days.

§ 1000.735–27 Review of statements of employment and financial interests.

(a) The Director of Personnel shall review employees' annual statements and supplementary statements of employment and financial interests to ascertain conflicts of interest or the appearance of conflicts of interest.

(b) Financial statements shall be kept confidential. The Director of Personnel is responsibile for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, these statements except as provided by law or regulation.

(c) The Chief Administrative Law Judge shall review the financial statements of all Administrative Law Judges to avoid conflicts of interest in the assignment of cases. This review shall be in addition to the review by the Director of Personnel.

GUIDELINES

Whenever, following review of the annual and supplementary statements of employment and financial interests, a conflict of interest may exist or appear to exist, the Director of Personnel shall notify the employee concerned, who shall promptly submit an explanation to the Director of Personnel regarding the existence or the appearance of a conflict of interest.

If, after reviewing the employee's explanation and after consulting with the Ethics Counselor, the Director of Personnel concludes that the conflict or appearance of a conflict of interest does exist, the Director of Personnel shall advise the employee of the steps necessary to remedy the situation.

§ 1000.735–28 Disclosure of employment of parent, spouse, child, or other relative.

Each employee whose parent, spouse, or child, or any other relative (including in-laws) residing in the immediate household, is employed by an entity subject to regulation by the Commission shall promptly notify the Director of Personnel of the relative's employment and furnish a detailed statement of the relative's job duties and responsibilities. The employee shall promptly notify the Director of Personnel of any change in the relative's employment, including a change in job duties or responsibilities.

GUIDELINES

The term "employed by an entity subject to regulation by the Commission" includes those who represent and perform a majority of their services for such an entity, as well as those directly employed by such an entity.

Each notification furnished under subparagraph (a) will be reviewed by the Director of Personnel to determine whether the situation presents a conflict of interest or appearance of a conflict of interest.

Whenever, in the opinion of the Director of Personnel, the situation may present a conflict of interest or appearance of a conflict of interest, the Director of Personnel shall notify the employee, who shall promptly submit an explanation regarding the existence or the appearance of a conflict of interest, together with any additional information requested by the Director of Personnel.

If, after reviewing the submitted explanation and information and after consulting with the Ethics Counselor, the Director of Personnel concludes that the situation does present a conflict of interest or an appearance of a conflict of interest, the Director of Personnel shall advise the employee of the necessary steps to remedy the situation. The Director of Personnel may, after consulting with the employee and the employee's Bureau or Office Head, take any personnel action that may be appropriate to eliminate the conflict of interest or appearance of a conflict of interest.

§ 1000.735–29 Specific provisions governing special Government employees.

(a) Special Government employees, as defined in 18 U.S.C. 202, shall not use: (1) Their Government employment for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or another person, particularly one with whom they have family, business, or financial ties; (2) any inside information obtained as a result of Government employment for private gain for themselves or another person either by direct action on their part or by counsel, recommendation, or suggestion to another person, particularly one with whom they have family, busi-

ness, or financial ties; (3) the Government to coerce, or give the appearance of coercing, a person to provide financial benefit to themselves, or another person, particularly one with whom they have family, business, or financial ties.

(b) Special Government employees shall adhere to all Canons of Conduct specified in this subpart except §§ 1000.735-17(b) and 1000.735-26. In lieu thereof, each special Government employee shall submit a statement of his or her employment and financial interest on ICC Form No. 1163 to the Director of Personnel at the time of his or her employment and shall keep the statement current throughout employment by submitting supplementary statements whenever any change in or addition to the information contained in the statement occurs.

§ 1000.735-30 Disciplinary and other remedial action.

Any violation of these Canons of Conduct by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the Manual—Administration 22-751, which may be in addition to any penalty prescribed by law.

Appendix I—Employees Required To Submit Periodic Disclosure Statements (49 CFR 1000.735-26)

The following list of positions required to file financial statements is subject to change by the Chairman without publication in the Federal Register. The Commission's Director of Personnel maintains at all times a current list of such positions.

OFFICE OF THE CHAIRMAN

1. Attorneys (or other professional staff).
2. Confidential Assistant to the Chairman.
3. Writer Editor (Assistant to the Chairman).
4. Public Information Officer.
5. Director, Policy Review Office.
6. Small Business Assistance Officer.
7. Congressional Relations Officer.
8. Deputy Congressional Relations Officer.
9. Chief, Clearance Unit.

COMMISSIONERS' OFFICES

1. Attorneys (or other professional staff).
2. Confidential Assistants to the Commissioners.

OFFICE OF THE MANAGING DIRECTOR

1. Managing Director.
2. Assistant Managing Director.
3. Assistant Managing Director (Operations and Assessment).
4. Assistant to the Managing Director (Field Operations).
5. Attorney-Adviser (General).
6. Director of Personnel.
7. Chief, Budget and Fiscal Office.
8. Assistant Chief, Budget and Fiscal Office.
9. Section Chiefs.
10. Chief, Procurement and Property Management Branch, Section of Administrative Services.

OFFICE OF THE REGIONAL MANAGING DIRECTORS (FIELD)

1. Regional Managing Directors.
2. Assistant Regional Managing Directors.
3. Regional Auditors.
4. Assistant Regional Auditors.
5. Regional Counsels.
6. Assistant Regional Counsels.
7. Regional Operations Directors.
8. Assistant Regional Operations Directors.
9. Chief Special Agents.
10. Officers in Charge, all offices.

OFFICE OF THE SECRETARY

1. Secretary.
2. Assistant Secretary.
3. Chief, Section of Dockets and Service.

OFFICE OF THE GENERAL COUNSEL

1. General Counsel.
2. Deputy General Counsel.
3. Associate General Counsels.

RAIL SERVICES PLANNING OFFICE

1. Director.
2. Section Chiefs.
3. Branch Chiefs.

OFFICE OF HEARINGS

1. Chief Administrative Law Judge.
2. Assistant Chief Administrative Law Judges.
3. Administrative Law Judges.

OFFICE OF PROCEEDINGS

1. Director.
2. Associate Director.
3. Deputy Directors.
4. Assistant Deputy Directors.
5. Chief, Section of Case Control and Information.
6. Chief, Section of Energy and Environment.
7. Branch Chiefs, Section of Finance.
8. Branch Chiefs, Section of Rates.

9. Branch Chiefs, Section of Operating Rights.
10. Chairmen and Members of Employee Boards.

BUREAU OF ACCOUNTS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.
5. Assistant Section Chiefs.
6. Branch Chiefs.

BUREAU OF ECONOMICS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.

BUREAU OF INVESTIGATIONS AND ENFORCEMENT

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.

BUREAU OF OPERATIONS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.
5. Assistant Section Chiefs.
6. Branch Chiefs.
7. Chairmen and Members of Employee Boards.

BUREAU OF TRAFFIC

1. Director.
2. Assistant Director.
3. Section Chiefs.
4. Branch Chiefs.
5. Chairmen and Members of Employee Boards.

Appendix II—Miscellaneous Statutory Provisions

Members and employees have an affirmative duty to acquaint themselves with all statutory provisions relating to the lawfulness and propriety of their official conduct. The following provisions, most of which apply to federal employees and officials in general, are presented in summary form. The actual text should be consulted for the particulars of prohibited conduct, as well as for specific exceptions and exemptions.

1. *Code of Ethics for Government Service*

All members and employees shall observe those fundamental principles of conduct in public service declared in House Concurrent Resolution 175, Code of Ethics for Government Service, which states in general terms those concepts of high obligations and responsibilities, as well as rights and privileges, attendant upon service for our Government. (72 Stat. B 12).

2. *Compensation to public officials for claims, contracts, etc.* (18 U.S.C. 203)

No public official shall directly or indirectly receive or solicit compensation for services rendered by himself or herself, or another, in relation to any application, contract, claim, controversy, or other matter in which the United States has a direct and substantial interest.

No person shall knowingly directly or indirectly give, promise, or offer any compensation to a public official for services rendered.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both; and removal.

3. *Prosecution of claims against and other matters affecting the Government by officers and employees* (18 U.S.C. 205)

No officer or employee of the United States shall act as agent or attorney, or receive any gratuity, for the prosecution or assistance in the prosecution of any claim against the United States.

No officer or employee of the United States shall act as agent or attorney for anyone in connection with any proceeding, application, contract, controversy or other matter in which the United States has a direct and substantial interest.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

4. *Post employment conflict of interest* (18 U.S.C. 207)

No officer or employee of the United States Government, after his or her employment has ceased, shall knowingly act as attorney, or otherwise represent any other person, or make any written oral communication with the intent to influence, on behalf of any other person, in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter in which the United States has a direct and substantial interest and in which he or she participated personally and substantially as an officer or employee.

No Government officer or employee, within two years after his or her employment has ceased, shall knowingly act as attorney or otherwise represent any other person in connection with any judicial or other proceeding, application, contract, claim, controversy, charge or other matter in which the United States has a direct and substantial interest and which was actually pending under his or her official responsibility within a period of one year prior to the termination of such responsibility, and in which he or she participated personally and substantially as an officer or employee.

No officer or employee who has been employed in a position for which the basic rate of pay is GS-17 or greater and who has had significant decision-making or supervisory responsibility, within one year after such employment has ceased, shall knowingly act as attorney, or otherwise represent anyone other than the United States, or make any oral or written communication with the intent to influence, to the agency in which he or she served as an officer or employee, in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter, which is pending before such agency or in which such agency has a direct and substantial interest.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

No partner of an officer or employee of the United States Government shall act as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter in which the United States has a direct and substantial interest, and in which such officer or employee has personally and substantially participated.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than one year, or both.

5. *Annual public financial disclosure requirements* (Sections 201-211 of the Ethics in Government Act of 1978)

Each Government officer or employee, whose position is classified at GS-16 or above, shall file with the designated agency official at the agency by which he or she is employed, on or before May 15 of each year, a report containing the following information concerning the preceding calendar year:

(1) The source, type, and amount of earned income from any source other than current employment by the United States Government;

(2) The source, date, and amount of honoraria earned, aggregating $100 or more in value;

(3) The source and type of unearned income received exceeding $100 in amount or value, that amount or value to be listed by category, for example, "not more than $1,000";

(4) The source and a brief description of any gifts of transportation, lodging, food, or entertainment, aggregating $250 or more in value received from any source other than a relative. Items received as personal hospitality or with a fair market value of $35 or less need not be aggregated;

(5) The source and brief description of all other gifts aggregating $100 or more in value. Gifts received from a relative or with a fair market value of $35 or less need not be aggregated;

(6) The source and a brief description of reimbursements received from any source aggregating $250 or more in value;

(7) The identity and category of value of any interest in property held in a business, or for investment or the production of income, which has a fair market value exceeding $1,000;

(8) The identity and category of value of the total liabilities owed to any creditor, other than a relative, which exceeds $10,000 at any time during the preceding year, excluding any mortgage secured by the reporting individual's personal residence, or motor vehicle loan;

(9) The date, category of value, and a brief description of any purchase, sale, or exchange in real property (other than a personal residence), stocks, bonds, and other forms of securities, which exceeds $1,000;

(10) The identity of all positions held with any business enterprise, non-profit organization, labor organization, and educational or other institution. Positions held with any religious, social, or political entity, or of an honorary nature need not be reported;

(11) A description of the date, parties, and terms of any agreement with respect to future employment, leave of absence, continuation of payments by a former employer, and continuing participation in an employee benefit plan;

(12) Required information described in numbers 1 through 9 of this provision shall be included in each report with respect to the spouse and dependent children of the reporting individual, with certain modifications;

(13) A description of holdings of an income from a trust or other financial arrangement. Holdings of or the source of income from any qualified blind trust, as defined in this section, need not be reported, but the individual shall report the category of the amount of income received;

Any report filed under this provision will be available to the public upon request.

Any individual who knowingly and willfully falsifies or fails to file or report required information shall be liable to a maximum civil penalty of $5,000, and personnel or other action in accordance with applicable law or regulation.

6. *Acts affecting a personal financial interest* (18 U.S.C. 208)

No officer or employee of the United States shall participate personally and substantially, through decision, in relation to any judicial or other proceeding, application, contract, claim, controversy, or other matter in which he or she has a direct or indirect financial interest.

Prior full disclosure of financial interest and written determination that such inter-

est is not substantial may permit such participation.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

7. *Unathorized use of documents relating to claims* (18 U.S.C. 285)

No one, without authority, shall remove or use any document prepared, or intended to be used, to procure the payment of any claim against the United States.

Violation of this prohibitions is punishable by a maximum fine of $5,000, or imprisonment for not more than five years, or both.

8. *Salary of government officials and employees payable only by United States* (18 U.S.C. 209)

No official or employee of the United States shall receive compensation for services as an officer or employee of the Government from any source other than the Government of the United States.

No individual or entity shall pay or supplement the salary of any such officer or employee for services as an officer or employee of the United States.

Violation of these prohibition is punishable by a maximum fine of $5,000, or imprisonment for more than one year, or both.

9. *Bribery of public officials* (18 U.S.C. 201)

No person or entity shall directly or indirectly give, offer, or promise anything of value to a public official with intent to: (a) Influence any official act, (b) influence such public official to commit or allow the commission of any fraud on the United States, or (c) induce such public official to act in violation of his or her lawful duty.

No public official shall directly or indirectly solicit, accept, or agree to receive anything of value for himself or herself, or another, in return for: (a) Being influenced in the performance of any official act, (b) being influenced to commit or allow the commission of any fraud on the United States, or (c) being induced to act in violation of his or her official duty.

Violation of these prohibitions is punishable by a fine of not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or a maximum of 15 years' imprisonment, or both; and removal.

10. *Acceptance or solicitation to obtain appointive public office* (18 U.S.C. 211)

No one shall solicit or receive money or anything of value in consideration for assistance in obtaining for any person appointive office or employment with the United States.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

11. *Gifts to superior* (5 U.S.C. 7351)

No employee shall: (a) Solicit a contribution from another employee for a gift to a superior, (b) make a donation as a gift to a superior, or (c) accept a gift from one to whom he or she is an official superior.

Violation of these prohibitions is punishable by a maximum penalty of removal.

12. *Lobbying with appropriated funds* (18 U.S.C. 1913)

No officer or employee of the United States, in the absence of express authorization by Congress, shall use, directly or indirectly, money appropriated by Congress to pay for any personal service, written matter, or other device intended to influence a Member of Congress to favor or oppose any legislation or appropriation by Congress.

Violation of this prohibition is punishable by a maximum fine of $500, or imprisonment for not more than one year, or both; and removal.

13. *Disclosure of confidential information* (18 U.S.C. 1905)

No officer or employee of the United States shall publish, disclose, or make known in any manner or to any extent not authorized by law, any confidential information made known to him or her in the course of his or her employment or official duties.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both; and removal.

14. *Disclosure of classified information* (18 U.S.C. 798)

No one shall knowingly and willfully communicate or otherwise make available to an unauthorized person, or publish or use in any manner prejudicial to the interest of the United States, any classified information.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than ten years, or both.

15. *Excessive and habitual use of intoxicants* (5 U.S.C. 7352)

No individual shall habitually use intoxicating beverages to excess.

Violation of this prohibition is punishable by removal.

16. *Misuse of franking privilege* (18 U.S.C. 1719)

No one shall make use of any official envelope, label, or endorsement authorized by law, to avoid the payment of postage on private letters, packages, or other matters in the mail.

Violation of this prohibition is punishable by a maximum fine of $300.

17. *Interference with Civil Service Examinations* (18 U.S.C. 1917)

No member or employee of the United States Civil Service Commission or an individual in the public service shall willfully and corruptly obstruct an individual in re-

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spect of his or her right of examination for competitive service, or falsely grade or report on the examination or proper standing of an individual examined; or make a false representation concerning the examination grade or proper standing of an individual examined; or furnish to an individual any special information for the purpose of improving or harming the prospects of an individual examined, being employed, or promoted.

Violation of these prohibitions is punishable, for each offense, by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

18. *Fraud and false statements* (18 U.S.C. 1001)

No one, concerning any matter within the jurisdiction of the United States, shall knowingly and willfully falsify or conceal a material fact, or make any false, fictitious, or fraudulent statements, or make or use any document knowing such document to contain any false, fictitious, or fraudulent statement.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than five years, or both.

19. *Concealment, mutilation, or destruction of Government documents* (18 U.S.C. 2071)

No one shall willfully and unlawfully conceal, remove, mutilate, falsify, destroy, or intentionally carry away any Government document.

Violation of this prohibition is punishable by a maximum fine of $2,000, or imprisonment for not more than three years, or both. Violation by one having custody of such document shall result in the custodian's removal from office.

20. *Forgery of Government transportation requests* (18 U.S.C. 508)

No one shall forge or counterfeit, knowingly alter, use, or sell any form or request provided by the Government for transportation by common carrier.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than ten years, or both.

21. *Misuse of Government vehicles* (31 U.S.C. 638a(c))

No officer or employee of the Government shall willfully use or authorize the use of any Government-owned or leased passenger motor vehicle or aircraft for other than official purposes.

Violation of this prohibition is punishable by a maximum penalty of removal.

22. *Accounting for public money* (18 U.S.C. 643)

An officer or employee of the United States who receives public money which he or she is not authorized to retain as salary must render an account of such money as provided by law.

An officer or employee who fails to render such an account is guilty of embezzlement, and shall be fined a sum equal to the amount of money embezzled, or imprisoned for not more than ten years, or both.

23. *Theft of Government money or property* (18 U.S.C. 641)

No one shall embezzle, steal, or knowingly convert, or, without authority, sell or convey documents, money, or things of value of the United States.

No one shall receive or retain such items knowing them to be embezzled, stolen or converted.

Violation of these prohibitions is punishable by a maximum fine of $10,000, and imprisonment for not more than ten years, or both.

24. *Wrongful conversion of property of another* (18 U.S.C. 654)

No officer or employee of the United States shall embezzle or wrongfully convert to his or her own use money or property of another which comes into his or her control in the execution of such employment of office.

Violation of this prohibition is punishable by a fine of not more than the value of the money or property thus converted, or imprisonment for not more than ten years, or both.

25. *Restrictions on political activities* (5 U.S.C. 7321–7327)

No federal employee shall use his or her official authority or influence for the purpose of interfering with or affecting the result of an election; or shall take an active part in political management, or in political campaigns (5 U.S.C. 7324).

Violation of these prohibitions is punishable by a maximum penalty of removal.

26. *Solicitation of political contributions* (18 U.S.C. 602)

No public official or employee of the United States shall directly or indirectly solicit or receive contributions for any political purpose whatever from any other such officer or employee.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

27. *Solicitation of political contributions in federal buildings* (18 U.S.C. 603)

No one shall solicit or receive any contribution of money or other thing of value for any political purpose in any Federal building.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

28. *Pecuniary interest in regulated carrier* (49 U.S.C. 10301(d), 10306(e), and 10344(e))

No Commission member, administrative law judge, employee board member, or joint

board member may have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode.

29. *Members' outside employment* (49 U.S.C. 10301(d))

A member of the Commission may not engage in another business, vocation, or employment.

30. *Officers and employees acting as agents of foreign principals* (18 U.S.C. 219)

No officer or employee of the United States shall act as an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938, as amended. (22 U.S.C. 611 *et seq.*)

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

31. *Striking against the Government* (15 U.S.C. 7311(3), 18 U.S.C. 1918(3))

An individual shall not accept or hold a position in the Government of the United States, if he or she participates in a strike against the Government.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year and a day, or both.

Subpart C—Additional Canons of Conduct for Members

AUTHORITY: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386, as amended, sec. 25, 41 Stat. 498, as amended, sec. 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec. 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

SOURCE: 44 FR 4617, Jan. 22, 1979, unless otherwise noted.

§ 1000.736–1 General policy.

Members of the Interstate Commerce Commission should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the Commission may be preserved. The provisions of these canons should be construed and applied to further that objective. Members of the Commission shall observe the standards of personal conduct in the Canons of Conduct for Members and Employees as set forth in Subpart B of this part.

§ 1000.736–2 Maintaining independence.

Members should not allow their family, social, or other relationships to influence their official conduct or judgment. They should not lend the prestige of their office to advance the private interests of others; nor should members convey the impression that they are subject to influence by others. Members should not change or tailor their views to appease any particular interest or group.

§ 1000.736–3 Official duties.

(a) Official duties, both administative and adjudicative, should be carried out diligently and impartially. Insofar as it is consistent with the dignity and responsibilities of their official positions, members should maintain contact with the persons outside the agency who may be affected by their functions.

(b) Members have the obligation to urge the Congress, whenever necessary, to amend, modify, or repeal particular parts of the statutes they administer.

(c) The members' decision to investigate should be based only on the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for, or participate in an investigation for reasons of animus, prejudice, or vindictiveness.

(d) Members have the obligation to adopt rules necessary to carry out the national transportation policy. The rules should not be burdensome; on the other hand, necessary rules should be adopted, modified, or repealed as changing requirements demand.

§ 1000.736–4 Extra-official activities.

Members must not engage in any business, employment, or vocation while in office, nor may they use the power of their offices or the influence of their names to promote the business interests of others. Members may participate in nonbusiness endeavors, such as civic and charitable activities, that do not reflect adversely upon their impartiality or interfere with the performance of official duties.

§ 1000.736–5 Qualification to participate.

Members should disqualify themselves in any matter in which their impartiality might reasonably be questioned. They should weigh carefully

the question of their qualification in any matter where they or their relatives or former business associates or clients are involved. If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualification.

PART 1001—INSPECTION OF RECORDS

Sec.

1001.1 Records available at the Commission's Washington office.
1001.2 Records available at the Commission's regional and detached offices.
1001.3 Certified copies of records, etc.
1001.4 Requests to inspect other records not considered public under 5 U.S.C. 552.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended, 81 Stat. 54; 49 U.S.C. 12; 5 U.S.C. 552.

SOURCE: 32 FR 20008, Dec. 20, 1967, unless otherwise noted.

§ 1001.1 Records available at the Commission's Washington office.

The following specific files and records in the custody of the Secretary are available to the public (secs. 16, 204, 316, and 417 of the Interstate Commerce Act, 49 U.S.C. 16, 304, 916, and 1017), and may be inspected at the Commission's office in Washington upon reasonable request during the Commission's business hours between 8:30 a.m. and 5:00 p.m., Monday through Friday.

(a) Copies of tariffs, rate schedules, section 22 quotations or tenders, classifications, powers of attorney, concurrences, and contracts filed with the Commission pursuant to sections 6, 22, 217, 218, 306, 405, and 409 of the Act (49 U.S.C. 6, 22, 317, 318, 906, 1005, and 1009).

(b) Annual and other periodic reports filed with the Commission pursuant to sections 20, 220, 313, and 412 of the Act (49 U.S.C. 20, 320, 913, and 1912).

(c) Annual reports, maps, profiles, and other data filed with the Commission pursuant to section 19a.

(d) All docket files, including pleadings, depositions, exhibits, transcripts of testimony, recommended and proposed reports, exceptions, briefs, and reports and decisions of the Commission in any proceeding and carrier operating authorities granted in such proceedings. This does not apply to matters arising under 49 U.S.C. 10928 which are filed in a Regional Office until a petition for reconsideration is ripe for decision.

(e) File of instruments or documents recorded pursuant to section 20c and index thereto.

(f) ICC Manual-Administration.

[32 FR 20008, Dec. 20, 1967, as amended at 45 FR 3583, Jan. 18, 1980]

§ 1001.2 Records available at the Commission's regional and detached offices.

Copies of certain rate schedules, tariffs, reports and operating authorities filed by and applicable to motor and water carriers and freight forwarders, and docket files in matters arising under 49 U.S.C. 10928 are available for inspection at field offices whose locations are set forth in the appendix in this part. These records are available upon reasonable request during its regular business hours, Monday through Friday. Records not available at the field offices may be obtained and inspected in accordance with the provisions of § 1001.1.

[45 FR 3583, Jan. 18, 1980]

§ 1001.3 Certified copies of records, etc.

Copies of and extracts from public records will be certified by the Secretary, under the seal of the Commission. Persons requesting the Commission to prepare such copies should clearly state the material to be copied, and whether it shall be certified. Charges will be made for certification and for the preparation of copies as provided in Part 1002 of this chapter.

§ 1001.4 Requests to inspect other records not considered public under 5 U.S.C. 552.

Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information Officer. The Freedom of Information Officer shall determine within 10

days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the Freedom of Information Officer determines that a request cannot be honored, he must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain to the requesting party his or her right of appeal. If the Freedom of Information Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(a)(3) (sec. 1, 81 Stat. 54), appeal from such ruling may be addressed to the Chairman whose decision shall be administratively final stating specifically the exemption(s) contained in 5 U.S.C. 552(b) relied upon for denial. Such an appeal must be filed within 30 days of the date of the Freedom of Information Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made for the direct costs incurred for searching and copying the records requested as provided for in § 1002.1 of this chapter. In the event that charges for any request are expected to exceed $25, the request will be deemed not to have been received until the requestor is notified (promptly upon physical receipt of the request) of the estimated charges and agrees to bear them. No such notification is required if the requestor specifically indicates in the initial request that whatever charges are incurred will be accepted. The Freedom of Information Officer reserves the right to waive any fees and charges described in § 1002.1 of this chapter if such waiver is found to be in the best interests of the public, or if a fee or charge would impose an undue hardship upon the requestor.

[45 FR 50333, July 29, 1980]

PART 1002—FEES

Sec.

1002.1 Fees for record search, copying, certification, and services in connection therewith.
1002.2 Filing fees.

§ 1002.1 Fees for records search, copying, certification, and services in connection therewith.

Certifications and copies of such tariffs, reports, and other public records and documents on file with the Interstate Commerce Commission, as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552) will be furnished on the following basis:

(a) Certificate of the Secretary, $2.50.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $7 per hour.

(c) Services involved in checking records to be certified to determine authenticity, the clerical work, etc., incidental thereto, at the rate of $4 per hour.

(d) [Reserved]

(e) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.25 per letter size or legal size exposure. A minimum charge of $2.50 will be made for this service.

(f) Search and copying services for records not considered public under the Freedom of Information Act as follows:

(1) The search fee shall be $4.00 per hour for services performed by clerical personnel, and $12.00 per hour for services performed by supervisory and professional personnel. A fee of $25.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for electrostatic copies shall be $0.25 per letter size or legal size exposure, with a minimum charge of $2.50 for this service.

(3) The fees for searches requiring the use of computers shall be $0.30 per port minute on the NDC system and $0.12 per port minute on the Compu Serve System. Printing shall be charged at a rate of $0.10 per page of computer generated output with a minimum charge of $25.00. A charge of $25.00 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(4) No fee shall be charged for time spent reviewing documents to determine disclosability under the Freedom of Information Act. A fee may be charged for searches which are not productive and for searches for records or those parts of records which are determined to be exempt from disclosure.

(g) Payment for services described in paragraphs (a) through (f) of this section may be made in cash or by postal money order or check payable to the order of the Secretary, Interstate Commerce Commission, Washington, D.C., and forwarded to his office.

(h) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Commission's official reporter. Transcript will be furnished to the public at actual cost to the official reporter for making copies of the original transcript. This amount may include reasonable overhead and profit but may not include any of the original cost of the transcription. Transcript will be delivered within 14 calendar days after the close of each day's proceeding in Washington, D.C., and within 21 calendar days after the close of each day's proceeding held outside Washington, D.C. Any person seeking transcript on an expedited basis must file a petition with the Commission not later than 10 calendar days prior to the date of the hearing setting forth the pertinent information which necessitates expedited delivery. If a petition is granted, the transcript will be made available at actual cost of duplication to all interested members of the public. If, however, all petitions are denied, any person desiring "daily copy" will have to negotiate directly with the official reporter. The Commission will insure by contract that daily copy will be provided and that the rate charged will not exceed that applicable to the Commission for original transcript if such demand is made at least three days prior to the date of the hearing.

(i) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Commission's official reporter, the Metropolitan Reporting Service, Inc., Suite 210, 7676 New Hampshire Avenue, Langley Park, Md. 20783. Transcripts will be furnished to the public at the following maximum rates per page of approximately 200 words:

18 cents per page for regular copy, 24¢ per page for daily copy, if approved by the Commission, and $5.25 per page for daily copy, if not approved by the Commission but three days' notice is given, for hearings or arguments held at Washington, D.C., and 30 cents per page for regular copy, 33¢ per page for daily copy, if approved by the Commission, and $6.75 for daily copy not approved by the Commission, for hearings or arguments held at points in the United States other than Washington, D.C., and other than the States of Alaska and Hawaii.

Application for copies and payment therefor should be made directly to the official reporter.

NOTE: The following statement of policy relating to the matter of the official reporting service for the Interstate Commerce Commission, dated June 11, 1964, appears at 29 FR 8418, July 3, 1964. During the past five years, the Commission has experienced serious difficulty obtaining responsive bids for its reporting services contract. Only one responsive bid was received each year during this period. For fiscal year 1965, beginning July 1, 1964, the Commission received no responsive bids to its invitation for bids on the contract for reporting services.

The lack of bidders for the contract results from the steadily decreasing sales of copies of the official transcript by the Official Reporter. It was brought to the Commission's attention that the decrease in sales is directly connected with the recopying of the transcript by the Practitioners in Commission proceedings from sources other than the Official Reporter. On a number of occasions the members of the Commission's bar through their committee representatives have been informed by the Commission that the continuance of the practice of recopying transcripts by sources other than the Official Reporter would jeopardize efforts to obtain bidders for contracts for reporting services. However, despite assurances that the unofficial recopying practice

would be discouraged, there has been little effect upon the sales of official copies. The sale of official copies has continued to decrease with the result that, as stated, no responsive bids were received to the Commission's recent invitation for bids for the reporting contract for fiscal year 1965.

Since the present contract for reporting services expires June 30, 1964, the Commission was confronted with the serious situation of having no reporter service available to record the hundreds of hearings scheduled for July 1964 as well as those which will be held during the remainder of the year. In order to prevent a cessation of Commission proceedings, steps were immediately taken to negotiate a contract with the present Official Reporter. These negotiations were successfully concluded only after the contractor was assured that the Commission would take affirmative measures to discourage the practice of recopying transcripts of hearings by unofficial sources. In addition, the Commission agreed to permit the contractor to cancel the field portion of the contract upon 30 days' notice in the event that these measures proved unsuccessful.

The Commission having been informed of this matter announces the following statement of policy:

The Commission has determined that it is in the public interest to limit to the fullest extent possible the cost of purchases of the official transcripts by the general public. In addition, the Commission is aware that the Official Reporter's ability to perform the duties set forth in the contract will be seriously impaired if his sales of copies of these official transcripts decrease, and that this would adversely affect the Commission's ability to perform its statutory duties to the detriment of the public interest. Practitioners before the Commission have a duty to uphold the policies of the Commission with respect to its procedures; therefore, it is the Commission's firm policy to discourage the reproduction of copies of transcript from any source other than the Official Reporter. A statement of the Commission's policy shall be made by the Hearing Officer or by a Joint Board in each Commission proceeding.

NOTE: This decision relating to paragraphs (h) and (i) is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(Sec. 11, 86 Stat. 767, U.S.C.)

[32 FR 20010, Dec. 20, 1967, as amended at 34 FR 18041, Nov. 7, 1969; 38 FR 18379, July 10, 1973; 41 FR 2825, Jan. 20, 1976; 46 FR 37702, July 22, 1981]

§ 1002.2 Filing fees.

(a) *Manner of payment.* All filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing. Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency.

(b) *Fees not refundable.* Fees will be assessed for every filing in the types of proceedings listed in the schedule of fees contained in paragraph (d) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, the fee will be returned.

(c) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as a single petition for modification of more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities; a section 5 motor common carrier acquisition application combined with a related section 207 application for a certificate of public convenience and necessity; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (b) of this section; except that, directly related applications involving a transfer under section 206(a)(6) or section 212(b), and an application on Form OP-OR-9 for gateway elimination and/or a conversion, the sole fee shall be the basic fee for the transfer application. Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be consid-

ered a separate filing, and shall be subject to payment as described in paragraphs (d)(45), or (d)(46) of this section.

(2) Separate fees will be assessed for the filing of temporary authority applications as provided in paragraph (d)(6) of this section, regardless of whether such applications are related to an application for corresponding permanent authority.

(3) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(d) *Schedule of filing fees.* [1]

TYPE OF PROCEEDING FEE	
PART I: APPLICATION FOR OPERATING AUTHORITY OR EXEMPTIONS	
(1) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. Section 1 (18)–(20)	$700
(2) A petition to interpret or clarify an operating authority under 49 CFR 1100.253(e)	$200
(3) An application for motor or water carrier operating or exemption authority, a certificate of registration, or an application for broker or freight forwarder authority	$350
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number	No fee
(5) A petition to renew authority to transport explosives under section 206 or 209	5
(6) An application for motor carrier temporary authority. Section 210(a)	60
(7) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 CFR 1131.1(b)(1); may continue	10
(8) A fitness-only application for motor common carrier authority under 10922(b)(4)(E) or motor contract authority under 10923(b)(5)(A) to transport food and related products	150
(9) An application to remove a restriction or broaden unduly narrow authority under 49 CFR Part 1137	350
(10) [Reserved]	
(11) [Reserved]	
(12) [Reserved]	
(13) An application for water carrier temporary authority. Section 311(a)	60
(14) [Reserved]	
(15) [Reserved]	
(16) An application for authority to deviate from authorized regular route, 49 CFR Part 1042	15

[1] Except as noted, statutory references are to the Interstate Commerce Act. The proceedings for which fees are assessed are arranged in four major categories.

TYPE OF PROCEEDING FEE—Continued	
PART II: APPLICATIONS TO DISCONTINUE TRANSPORTATION SERVICE	
(17) An application for authority to abandon all or a portion of a line of railroad or the operation thereof. Section 1(18)	700
(18) Notice or petition to discontinue train or ferry service. Section 13a	650
PART III: APPLICATIONS TO ENTER UPON A PARTICULAR FINANCIAL TRANSACTION OR JOINT ARRANGEMENT	
(19) An application for use of terminal facilities. Section 3(5)	150
(20) An application for the pooling or division of traffic. Section 5(1)	100
(21) An application of two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership. Section 5(2)	700
(22) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. Section 5(2)	700
(23) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. Section 5(2)	700
(24) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. Section 5(2)	700
(25) An application for a determination of fact of competition. Section 5(15)	100
(26) An application for approval of, or to amend, a rate association agreement. Section 5a	300
(27) All applications for authority to hold a position as officer or director. Section 20a(12)	10
(28) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption from competitive bidding requirements of Ex Parte No. 158, 49 CFR 1115.25. Sections 20a, 20b, or 214	200
(29) An application for temporary authority to operate a motor or water carrier. Section 210a(b) or 311(b)	60
(30) An application for transfer or lease of a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's licenses. Sections 212(b), 312, or 410(g)	100
(31) A petition to transfer a water carrier exemption authorized under sections 302 and 303 to the successor	100
(32) An application for approval of a motor vehicle rental contract. 49 CFR 1057.6(b)	30
PART IV: OTHER PROCEEDINGS	
(33) An application for relief from the long-and-short-haul and aggregate-of-intermediate provisions, including applications for relief with respect to additional commodities, origins or destinations, but not including petitions for modification of conditions, effective or not yet effective of outstanding orders, or amendments to applications not yet disposed of. Section 4	250
(34) An application for authority to establish released value rates or ratings, except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or *other calamitous visitation under section 22(1)* of the act. Sections 20(11), 219, 413	200

TYPE OF PROCEEDING FEE—Continued

PART IV: OTHER PROCEEDINGS—Continued

(35) An application for special permission for short notice or the waiver of tariff-publishing requirements, including applications to extend or eliminate the scheduled expiration date of an outstanding special permission or to broaden the application thereof to additional territory or tariffs, except amendments to pending applications not yet disposed of, and applications to postpone the effectiveness of suspended schedules, when carrier or agent is requested to do so, in order to afford the Commission more time for disposition of the proceeding or to postpone the scheduled effective date of protested schedules or those for which a fourth-section application has been filed, in order to afford the boards more time within which to process the protests or applications	20
(36) Application for basic (original) valuation of a pipeline carrier's operating property. Section 19a	10/hr.
(37) Application for each annual valuation of a pipeline carrier's operating property as of the close of any calendar year following the carrier's basic valuation. Section 19a [2]	
(38) An application for original qualification as an insurer, surety, or self-insurer	65
(39) An annual qualification service fee for insurer, surety, or self-insurer accepted certificate of insurance or surety bond ($50 minimum) [3]	
(40) A petition for waiver of any provision of the lease and interchange regulations, 49 CFR Part 1057	35
(41) A petition for reinstatement of revoked operating authority	60
(42) [Reserved]	
(43) A petition to define or redefine a commercial zone, or to remove the exemption applicable to commercial zone movements and a petition for individual determination of the exempt areas within which air cargo pickup and delivery service or transportation of air passengers may be performed. Sections 203(b)(7a), 203(b)(8); 49 CFR 1047.40(c) and 1047.45(c)	150
(44) A complaint seeking or a petition requesting institution of an investigation seeking the prescription of divisions of joint rates, fares, or charges. Section 15(6)	700
(45) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling	150
(46) A notice required by 49 CFR 1136.4 to update a previously filed notice of intent to engage in compensated intercorporate hauling	150
(47)—(48) [Reserved]	
(49) An application filed under 49 U.S.C. 10010, Feeder Line Devleopment Program	300

[2] The following fees are based on the carrier's size:

[3] The annual qualification fee will be based on a formula of $10 per accepted certificate of insurance or surety bond as an indication of ICC insurance activity.

Cost of reproduction (millions)	Fee
1 Under 10	$50
10–29.9	200
30–49.9	500
50–74.9	700
75–99.9	1,000
100–149.9	1,300
150–199.9	1,850
200–299.9	2,500
Over 300	4,300

(Sec. 501, 65 Stat. 290, 31 U.S.C. 483a; 49 U.S.C. 10101, 10321, 10924, 10925, and 10927; 5 U.S.C. 552, 553, 558, and 559))

[36 FR 11294, June 11, 1971, as amended at 36 FR 17432, Aug. 31, 1971; 37 FR 215, Jan. 7, 1972; 37 FR 9027, May 4, 1972; 38 FR 5876, Mar. 5, 1973; 41 FR 1484, Jan. 8, 1976; 42 FR 21783, Apr. 29, 1977; 45 FR 45528, 45544, July 3, 1980; 45 FR 52802, Aug. 8, 1980; 45 FR 86757, 86765, 86789, Dec. 31, 1980; 46 FR 19498, Mar. 31, 1981; 46 FR 35657, July 10, 1981; 46 FR 37702, July 22, 1981]

PART 1003—LIST OF FORMS

Sec.

1003.1 Motor Carrier and Broker Forms.
1003.2 Water Carrier Application Forms.
1003.3 Freight Forwarder Forms.
1003.4 Forms for Issuance of Securities and Assumption of Obligations.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended; sec. 204, 49 Stat. 546, as amended; sec. 304, 54 Stat. 933; and sec. 403, 56 Stat. 285; 49 U.S.C. 12, 304, 904, and 1003.

SOURCE: 32 FR 20011, Dec. 20, 1967, unless otherwise noted.

NOTE: The forms listed in this part are prescribed for various applications under the Interstate Commerce Act and the Commission's regulations contained in Subchapters A and B of this chapter.

Other printed forms are prescribed in the Commission's Regulations governing accounts, records, and reports contained in Subchapter C of this chapter.

All prescribed forms listed in this part and Subchapter C include instructions for their completion.

Copies of all prescribed forms are available upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

§ 1003.1 Motor Carrier and Broker Forms.

(a) Application Forms.

BOC-3 Designation of Agent for Service of Process.

Section 221(c) of the Interstate Commerce Act. This form is required

to be filed by all motor carriers and brokers prior to issuance of operating authority.

(Secs. 204(a), and 221(c), 49 Stat. 546, 563, as amended; 49 U.S.C. 304, 321)

CROSS REFERENCE: Part 1044 of this chapter.

OP-1

Application for motor carrier authority, broker or freight forwarder authority, and water carrier exemption.

OP-F-44.

Application for authority under section 5, Interstate Commerce Act, to consolidate, merge, purchase, or lease operating rights and properties, or any part thereof, of a motor carrier.

CROSS REFERENCE: Part 1134 of this chapter.

OP-F-45.

Application for authority under section 5, Interstate Commerce Act, to acquire control of a motor carrier or motor carriers through ownership of stock, or otherwise.

CROSS REFERENCE: Part 1134 of this chapter.

OP-F-46.

Application for approval under section 210a(b), Interstate Commerce Act, of the temporary operation of motorcarrier properties sought to be acquired under separately filed application under section 5.

CROSS REFERENCE: Part 1134 of this chapter.

OP-OR-110.

Applications for certificates of exemption under section 204(a)(4a) of the Interstate Commerce Act covering motor-carrier operations in interstate or foreign commerce lawfully conducted solely within a single State.

OP-OR-10.

Application for Postal Motor Carrier Certificate, adopted March 3, 1971, to be used by persons who were contractors under a star route, mail messenger, or contract motor vehicle service contract, on the effective date of Chapter 52 of the Postal Reorganization Act (Public Law 91-375).

OP-MCB-95 (Rev. 1972).

Application under section 210a (a) of the Interstate Commerce Act for temporary authority to operate as a common or contract carrier by motor vehicle.

CROSS REFERENCE: Part 1131 of this chapter.

OP-TA-19.

Request for extension of emergency temporary authority.

CROSS REFERENCE: Part 1131 of this chapter.

OP-TA-19(a).

Certificate of continuing need for emergency temporary authority.

CROSS REFERENCE: Part 1131 of this chapter.

OP-OR-100.

Application for Motor Carrier Certificate of Registration, Form OP-OR 100, to be used only by common carriers by motor vehicle who or which propose to engage in transportation in interstate and foreign commerce under the provisions of section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962.

CROSS REFERENCE: Part 1047 of this chapter.

BOp 79.

Application for approval of contract carrier rental contract under authority of § 1057.6(b) of Ex Parte No. MC43.

OCP 100

Your Rights and Responsibilities When You Move.

OCP 101

Annual Performance Report.

OCP 102

Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers Under 49 U.S.C. 10526(a)(5), to be used by cooperative associations or federations of cooperative associations which intend

to perform interstate transportation for nonmembers who are neither farmers, other cooperative associations, nor federations of cooperative associations.

(49 U.S.C. 10526(a)(5) and 10529)

CROSS REFERENCE: Section 1047.20 of this chapter.

OP-FC-1

Applications arising in proceedings other than Section 5 of the Interstate Commerce Act (A) for transfer or lease of (1) motor carrier Certificates of Registration issued pursuant to section 206 of the Act, (2) motor common and contract carrier operating rights issued pursuant to Sections 207 and 209 of the Act, and (3) brokers' licenses issued pursuant to Section 211 of the Act; and (B) for approval of a change in control of a company holding a broker's license.

CROSS REFERENCES: Parts 1045, 1132 and 1133 of this chapter.

(b) Insurance and Surety Bond Forms.

CROSS REFERENCE: Part 1043 of this chapter.

B.M.C. 32.

Endorsement for motor common-carrier policies of insurance for cargo liability under section 215 of the Interstate Commerce Act.

B.M.C. 34 (Rev. 1957).

Motor carrier cargo liability certificate of insurance.

B.M.C. 35 (Rev. 1957).

Notice of cancellation motor carrier policies of insurance.

B.M.C. 36 (Rev. 1957).

Notice of cancellation motor carrier and broker's surety bonds.

B.M.C. 40 (Rev. 1958).

Application for authority to self-insure under section 215 of the Interstate Commerce Act.

B.M.C. 82 (Rev. 1957).

Motor carrier bodily injury liability and property damage liability surety bond.

B.M.C. 83 (Rev. 1976).

Motor Common Carrier Cargo Liability Surety Bond.

B.M.C. 84.

Broker's surety bond under section 211(c) of the Interstate Commerce Act.

B.M.C. 90

Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability under 49 U.S.C. 10927.

B.M.C. 91 (Rev. 1957).

Motor carrier automobile bodily injury liability and property damage liability certificate of insurance.

B.M.C. 94.

Designation of Agent for Service of Process.

[32 FR 20011, Dec. 20, 1967, as amended at 33 FR 14413, Sept. 25, 1968; 34 FR 8118, May 23, 1969; 35 FR 4754, Mar. 19, 1970; 36 FR 5912, Mar. 31, 1971; 37 FR 14308, June 19, 1972; 37 FR 21999, Oct. 18, 1972; 37 FR 24355, Nov. 16, 1972; 38 FR 6828, Mar. 13, 1973; 38 FR 10445, Apr. 27, 1973; 38 FR 26205, Sept. 19, 1973; 39 FR 9831, Mar. 14, 1974; 39 FR 35366, 35367, Oct. 1, 1974; 41 FR 13926, Apr. 1, 1976; 41 FR 14875, Apr. 8, 1976; 42 FR 21783, Apr. 29, 1977; 44 FR 18458, Mar. 27, 1979; 44 FR 30346, May 25, 1979; 45 FR 45544, July 3, 1980; 46 FR 16224, Mar. 11, 1981; 46 FR 31016, June 12, 1981; 46 FR 38486, July 27, 1981]

§ 1003.2 Water Carrier Application Forms.

B.W.C. 6.

Designation of agent for service of notices, orders, and process, pursuant to Part III of the Act.

OP-WC-25.

Temporary authority application under section 311(a) of the Interstate Commerce Act.

[32 FR 20011, Dec. 20, 1967, as amended at 34 FR 18122, Nov. 11, 1969; 38 FR 3389, Feb. 6, 1973; 38 FR 26205, Sept. 19, 1973; 39 FR 6711, Feb. 22, 1974; 45 FR 45544, July 3, 1980]

CROSS REFERENCE: Part 1140 of this chapter.

§ 1003.3 Freight Forwarder Forms.

(a) Application forms.

CROSS REFERENCE: Part 1150 of this chapter.

FF 3. Designation of agent for service of notices, orders, and process, pursuant to Part IV, section 416(a).

(b) Insurance and surety bond forms.

CROSS REFERENCE: Part 1084 of this chapter.

[32 FR 20011, Dec. 20, 1967, as amended at 33 FR 14413, Sept. 25, 1968; 38 FR 3389, Feb. 6, 1973; 39 FR 11891, Apr. 1, 1974; 41 FR 14875, Apr. 8, 1976; 45 FR 45544, July 3, 1980]

§ 1003.4 Forms for Issuance of Securities and Assumption of Obligations.

(a) Application forms:

BF-6, Application under sections 20a or 214, Interstate Commerce Act, for authority to issue securities, or to assume obligation or liability in respect of securities of another.

OP-F 210, Special application for authority to sell securities without competitive bidding.

(b) Report forms:

OP-F 220, Certificate of notification under section 20a(5), Interstate Commerce Act: Disposal of pledged or Treasury securities.

OP-F 230, Certificate of notification under section 20a(9), Interstate Commerce Act: Issuance of short-term notes.

OP-F 240, Special report under section 20a(10), Interstate Commerce Act: Issuance of securities or assumption of obligations.

[32 FR 20011, Dec. 20, 1967, as amended at 39 FR 35366, 35367, Oct. 1, 1974]

CROSS REFERENCE: Part 1115 of this chapter.

PART 1004—ADMINISTRATIVE INTERPRETATIONS—STATEMENTS OF POLICY

Sec.

1004.1 Authorization for adjustment of claims for damages resulting from misrouting.

1004.2 Gifts, donations, and hospitality by carriers.

§ 1004.1 Authorization for adjustment of claims for damages resulting from misrouting.

While the Interstate Commerce Commission has no authority to award damages against motor carriers subject to part II of the Interstate Commerce Act, it is of the opinion that motor carriers should adjust claims caused by misrouting; and carriers subject to part 1 of the act, with respect to which the Commission does have jurisdiction to award damages, should continue to adjust claims caused by misrouting.

(a) *Applicability.* This interpretation applies only to cases in which carriers, without concurrence of the shipper, bill or actually forward or divert a shipment over a route that is more expensive than that directed by the shipper, or one more expensive than a route available (over carriers of the same type or mode as the initial carrier) in the absence of routing instructions by the shipper. This interpretation must not be used as a means or device by which to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for his own routing instructions.

(b) *Refund.* If a carrier misroutes a shipment and thus causes extra expense to the shipper over and above the legal charges applicable over the route that should have been used, and responsibility for its error is admitted by the carrier, such carrier should adjust the charge on such shipment by refunding to the shipper the difference in the legal charges over the route over which the shipment moved and what would have been the legal charges on the same shipment at the same time over the lower rated available route which should have been used. Such refund must be paid in full by the carrier which caused the misrouting, and must not be shared in by or divided with any other carrier.

(c) *Bearing of charges.* The prerequisites to any refund under this interpretation are admission by the carrier of responsibility for its error in misrouting the shipment, and its willingness to bear the extra expense so caused, without recourse upon any

other carrier for any part thereof. Therefore, if the misrouting is discovered before the shipment has been delivered to consignee or before charges demanded for the shipment have been paid, the carrier acknowledging responsibility for the error should authorize the delivering carrier to deliver shipment upon payment of the charges that would have applied but for the misrouting and to bill it for the extra charge resulting from the misrouting; and if the misrouting is discovered after the shipment has been delivered upon payment of the charges applicable over the lower rated route that should have been used, the carrier that acknowledges responsibility for the error should pay to the carrier that delivered the shipment the extra charge resulting from the misrouting, without further handling with the shipper.

(d) *Declaratory determination of lawfulness.* Where a carrier claims justification for forwarding a shipment over the higher rated route, the commission, at its discretion, and upon appropriate petition, may make a declaratory determination of the lawfulness thereof. With respect to motor transportation such declaratory determinations will serve only as aids to the courts or as opinions by the Commission as to the lawfulness of any adjustment or refund.

(e) *Time limitations.* Damages caused by misrouting are not overcharges. Therefore, adjustments of claims for misrouting against carriers subject to the provisions of part I of the act are governed by section 16(3) (b) and (d) of the act.

(25 Stat. 858, 52 Stat. 1237, 80 Stat. 383; 49 U.S.C. 12, 304, 5 U.S.C. 552)

[32 FR 20013, Dec. 20, 1967]

§ 1004.2 Gifts, donations, and hospitality by carriers.

(a) This Commission has long been confronted with questions propounded by the public concerning the correct application and interpretation of the law as it relates to the extent, if any, to which a regulated carrier may lawfully make gifts or donations or provide hospitality to a shipper's representative.

(b) In the light of current business practices and some apparent continued uncertainty with respect to matters concerning the lawful limits of the practice of carriers making gifts or donations or providing hospitality to shippers and their representatives, the Commission deems it appropriate to issue this statement of policy.

(c) The enactment of the Interstate Commerce Act and its amendments was for the purpose of eliminating abuses. Common carriers are engaged in what has always been regarded as a public business and by reason of this status they are subject to strict legal obligations. They must, within the limits of their abilities, serve all who seek their services, and serve them equally and fairly. The "buying of freight" either directly or indirectly does not comport with fulfilling that obligation.

(d) Some purchasers of transportation may not be beyond soliciting favors from the carriers. Certainly the intent of the law is to protect both the shipper and the carrier. Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of the Act, is in violation of the law. Thus, a gift by the carrier to a shipper of anything of substantial intrinsic value would be deemed a violation of the law and would subject both the carrier and the recipient to the penalties therein provided.

(e) It is also evident that substantial expenditures of this type could have the effect of raising the level of rates and charges for carrier services. Therefore, great care will be taken by this Commission to assure that no such expenses will be allowed to support requests to increase carrier rates and charges. It will be our purpose to take appropriate enforcement action wherever concessions involving unlawful expenditures of the described type are found to occur. Some such matters which have come to our attention are presently under investigation by our field staff.

(f) For the purpose of giving greater publication to the principles involved, the following points involving the carrier-shipper relation are restated here:

(1) It is unlawful for any common carrier engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person.

(2) No common carrier shall refund or remit in any manner or by any device, directly or indirectly, or extend to any person any privileges or facilities for transportation in interstate commerce except such as are specified in its tariffs. (Obviously no carrier's tariffs can contain provisions for gifts or privileges for preferred customers, or any other limited class, since they are in violation of the law.)

(3) Gifts of services or articles of substantial value to particular shippers or their representatives are considered violations of the law. For example, transportation of shipper representatives in carrier-owned aircraft or automobiles to resorts for recreational weekends or similar excursions are so regarded. Also, the use of trading stamps by common carriers is considered to amount to a rebate, whether the stamps are redeemable by the carrier or by a third party. Essentially, this is a discount and, though no cash is refunded, the equivalent of cash is given to the customer. Common carriers may not participate in such plans.

(Sec. 12, 24 Stat. 383, as amended, 81 Stat. 54; 49 U.S.C. 12, 5 U.S.C. 552)

[34 FR 12221, July 24, 1969]

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

Sec.

1005.1 Applicability of regulations.
1005.2 Filing of claims.
1005.3 Acknowledgement of claims.
1005.4 Investigation of claims.
1005.5 Disposition of claims.
1005.6 Processing of salvage.
1005.7 Weight as a measure of loss.

AUTHORITY: 24 Stat. 380, 383 as amended, 386: 34 Stat. 595 as amended; 44 Stat. 1450 as amended; 49 Stat. 546 as amended; 550 as amended, 558 as amended, 560 as amended, 561 as amended, 563 as amended; 52 Stat. 1237; 54 Stat. 900, 922, 933, 934 as amended, 935, 944 as amended, 946; 56 Stat. 285, 286, 287, 294 as amended, 295, 297, 746 as amended; 62 Stat. 472; 63 Stat. 486; and 64 Stat. 1114 as amended, 49 U.S.C. 1, 5, 5b, 6, 12, 20, 304, 305, 316, 317, 318, 319, 320, 904, 905, 906, 913, 916, 1003, 1004, 1005, 1009, 1012, 1013, and 1017.

SOURCE: 37 FR 4258, Mar. 1, 1972, unless otherwise noted.

§ 1005.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to the Interstate Commerce Act.

[46 FR 16224, Mar. 11, 1981]

§ 1005.2 Filing of claims.

(a) *Claims in writing required.* A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed in writing, as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.

(b) *Minimum filing requirements.* A communication in writing from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and: (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property involved, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage.

(c) *Documents not constituting claims.* Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) *Claims filed for uncertain amounts.* Whenever a claim is presented against a proper carrier for an uncertain amount, such as "$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) *Other claims.* If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his title to the property involved or his right with respect to such claim.

§ 1005.3 Acknowledgment of claims.

(a) Each carrier shall, upon receipt in writing of a proper claim in the manner and form described in these regulations, acknowledge the receipt of such claim in writing to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgment to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the written acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's written acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consistent internal procedure for assuring: (1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which claim is made, is available for examination upon receipt of a claim; (2) that all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and (3) that such procedures prevent the duplicate or otherwise unlawful payment of claims.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 20943, Oct. 10, 1972]

§ 1005.4 Investigation of claims.

(a) *Prompt investigation required.* Each claim filed against a carrier in the manner prescribed herein shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice or an exact copy thereof, or an extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where the property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has not been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim thereon, require the claimant to establish the destination value in the quantity, shipped, transported, or involved and to certify the correctness thereof in writing.

(c) *Verification of Loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 23909, Nov. 10, 1972]

§ 1005.5 Disposition of claims.

(a) Each carrier subject to the Interstate Commerce Act which receives a written claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

[37 FR 4258, Mar. 1, 1972, as amended at 46 FR 16224, Mar. 11, 1981]

§ 1005.6 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions herein contained is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner hereinbefore prescribed, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

§ 1005.7 Weight as a measure of loss.

Where weight is used as a measure of loss in rail transit of scrap iron and steel and actual tare and gross weights are determined at origin and destination, the settlement of claims shall be based upon a comparison of net weights at origin and destination.

[41 FR 25908, June 23, 1976]

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

Sec.

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AUTHORITY: Secs. 552, 553, and 559, Administrative Procedure Act (5 U.S.C. 552, 553 and 559).

SOURCE: 41 FR 3087, Jan. 21, 1976, unless otherwise noted.

§ 1007.1 Purpose and scope.

(a) This part contains the rules of the Interstate Commerce Commission implementing the Privacy Act of 1974 (5 U.S.C. 552a). These rules apply to all records maintained by this Commission which are not excepted or exempted as provided for in § 1007.12, insofar as they contain personal information concerning an individual, identify that individual by name or other symbol and are contained in a system of records from which information is retrieved by the individual's name or identifying symbol. Among the primary purposes of these rules are to permit individuals to determine whether information about them is contained in Commission files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and, to restrict access by unauthorized persons to that information.

(b) In this part the Commission is also exempting certain Commission systems of records from some of the provisions of the Privacy Act of 1974 that would otherwise be applicable to those systems.

§ 1007.2 Definitions.

As used in this part:

"Commission" means the Interstate Commerce Commission.

"Chairman" means the Presidentially appointed Commissioner who is the administrative head of the Interstate Commerce Commission.

"Privacy Officer" refers to the individual designated to process requests and handle various other matters relating to the Commission's implementation of the Privacy Act of 1974.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" means the maintenance, collection, use, or dissemination (of records).

"Record" means any item, collection or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains

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his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

"Statistical Record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 of the United States Code.

"System of records" means a group of any records under the control of the Commission retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose of which the record was compiled.

"Agency" means any executive department, military department, Government corporation, Government-controlled corporation or other establishment in the Executive Branch of the Government or any independent regulatory agency.

§ 1007.3 Requests by an individual for information or access.

(a) Any individual may request information on whether a system of records maintained by the Commission contains any information pertaining to him or her, or may request access to his or her record or to any information pertaining to him or her which is contained in a system of records. All requests shall be directed to the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW, Washington, D.C. 20423.

(b) A request for information or for access to records under this part may be made by mail or in person. The request shall: (1) Be in writing and signed by the individual making the request; and, (2) include the full name of the individual seeking the information or record, along with his or her home and business addresses and telephone numbers.

(c) For each system of records from which information is sought, the request shall: (1) Specify the title and identifying number as it appears in the system notice published by the Commission; (2) provide such additional identifying information, if any, as may be required by the system notice; (3) describe the specific information or kind of information sought within that system of records; and, (4) set forth any unusual arrangements sought concerning the time, place, or form of access.

(d) The Commission will respond in writing to a request made under this section within ten days (excluding Saturdays, Sundays and legal public holidays) after receipt of the request. If a definitive reply cannot be given within ten days, the request will be acknowledged and an explanation will be given of the status of the request.

(e) The individual either will be notified in writing of where and when he or she may obtain access to the records requested or will be given the name, address and telephone number of the member of the Commission staff with whom he or she should communicate to make further arrangements for access.

§ 1007.4 Procedures for identifying the individual making the request.

When a request for information or for access to records has been made pursuant to § 1007.3, before information is given or access is granted pursuant to § 1007.5 of these rules, the Commission shall require reasonable identification of the person making the request to insure that information is given and records are disclosed only to the proper person.

(a) An individual may establish his identity by:

(1) Submitting with his written request for information or for access to photocopy, two pieces of identification bearing his or her name and signature, one of which shall bear his or her current home or business address; or

(2) Appearing at any office of the Commission during the regular working hours for that office and presenting either:

(i) One piece of identification containing a photograph and signature, such as a driver's license or passport,

or, in the case of a Commission employee, his or her ICC identification card; or

(ii) Two pieces of identification bearing the individual's name and signature, one of which shows the individual's current home or business address; and

(3) Providing such other proof of identity as the Commission deems satisfactory in the circumstances of a particular request.

(b) Nothing in this section shall preclude the Commission from requiring additional identification before granting access to the records if there is reason to believe that the person making the request may not be the individual to whom the record pertains, or where the sensitivity of the data may warrant.

(c) The requirements of this subsection shall not apply if the records involved would be available to any person under the Freedom of Information Act.

§ 1007.5 Disclosure of requested information to individuals; fees for copies of records.

(a) Any individual who has requested access to his or her record or to any information pertaining to that individual in the manner prescribed in § 1007.3 and has identified himself or herself as prescribed in § 1007.4 shall be permitted to review the record and have a copy made of all or any portion thereof in a form comprehensible to the individual, subject to fees for copying services set forth in paragraph (f) of this section. Upon request, persons of the individual's own choosing may accompany the individual, provided that the individual has furnished a written statement authorizing discussion of his or her record in the accompanying person's presence.

(b) Access will generally be granted in the office of the Commission where the records are maintained during normal business hours, but for good cause shown the Commission may grant access at another office of the Commission or at different times for the convenience of the individual making the request. When a request for access is from a Commission employee, this request may be granted by forwarding the information desired through registered mail, return receipt requested.

(c) Where a document containing information about an individual also contains information not pertaining to him or her, the portion not pertaining to the individual shall not be disclosed except to the extent the information is available to any person under the Freedom of Information Act. If the records sought cannot be provided for review and copying in a meaningful form, the Commission shall provide to the individual a summary of the information concerning the individual contained in the record or records which shall be complete and accurate in all material aspects.

(d) Where the disclosure involves medical records, the Privacy Officer may determine that such information will be provided only to a physician designated by the individual.

(e) Requests for copies of documents may be directed to the Privacy Officer or to the member of the Commission's staff through whom arrangements for access were made.

(f) Fees for copies of records shall be charged at the rate of 10 cents per letter-size or legal-size exposure duplicated electrostatically. Fees for requests requiring the use of a computer shall be charged at the actual cost for machine time. Payment should be made by check or money order payable to the Treasury of the United States. When it is determined to be in the best interest of the public, the Privacy Officer may waive the fee provision.

(g) Nothing in this subsection or in § 1007.3 shall:

(1) Require the disclosure of records exempted under § 1007.12 of these rules, including the exemption relating to investigative records;

(2) Allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding or a criminal proceeding; or,

(3) Require the furnishing of information or records which in the regular course of business cannot be retrieved by the name or other identifier of the individual making the request.

§ 1007.6 Disclosure to third parties.

(a) The Commission shall not disclose to any agency or to any person by any means of communication a record pertaining to an individual which is contained in a system of records, except under the following circumstances:

(1) The individual to whom the record pertains has given his written consent to the disclosure;

(2) The disclosure is to officers and employees of the Commission who need it in the performance of their duties;

(3) Disclosure is required under the Freedom of Information Act (5 U.S.C. 552).

(4) Disclosure is for a routine use as defined in § 1007.2 of these rules and described in the system notice for that system of records;

(5) The disclosure is made to the Bureau of the Census for the purposes of planning or carrying out a census or survey or related activity;

(6) The disclosure is made to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(7) The disclosure is made to another agency or to an instrumentality of any Governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) The disclosure is made to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.

(9) The disclosure is made to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(10) The disclosure is made to either House of Congress, or, to the extent of matter(s) within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(11) The disclosure is made to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or,

(12) Pursuant to the order of a court of competent jurisdiction.

(b) The Commission, with respect to each system of records under its control, shall keep for at least five years an accurate accounting of certain disclosures:

(1) A record shall be kept of all disclosures made under paragraph (a) of this section, except disclosures made with the consent of the individual to whom the record pertains (paragraph (a)(1) of this section), disclosures to authorized employees (paragraph (a)(2) of this section), and disclosures required under the Freedom of Information Act (paragraph (a)(3) of this section).

(2) The record shall include:

(i) The date, nature, and purpose of each disclosure of a record made to any person or to another agency;

(ii) The name and address of the person or agency to whom the disclosure was made.

(c) The accounting described in paragraph (b) of this section will be made available to the individual named in the record upon his written request, directed to the Privacy Officer, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, D.C. 20423, except that the accounting will not be revealed with respect to disclosures made under paragraph (a)(7) of this § 1107.6 pertaining to law enforcement activity, and will not be maintained as to disclosures involving systems of records exempted under § 1007.12.

(d) Whenever an amendment or correction of a record or a notation of dispute concerning the accuracy of records is made by the Commission in

accordance with §§ 1007.8 and 1007.9, the Commission will inform any person or other agency to whom the record was previously disclosed, if an accounting of the disclosure was made pursuant to the requirements of paragraph (b) of this section.

§ 1007.7 Content of systems of records.

(a) The Commission will maintain in its records only such information about an individual as is relevant and necessary to accomplish the purposes of the Interstate Commerce Act and other purposes required to be accomplished by statute or by Executive Order of the President.

(b) The Commission will maintain no record describing how any individual exercises rights guaranteed by the First Amendment of the United States Constitution unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(c) The Commission will collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(d) The Commission will maintain all records which are used by the Commission in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

§ 1007.8 Amendment of a record.

(a) Any individual may request amendment of information pertaining to him which is contained in a system of records maintained by the Commission and which is filed under his name or other individual identifier if he believes the information is not accurate, relevant, timely or complete. A request for amendment shall be directed to the Privacy Officer.

(b) A request for amendment may be made by mail or in person and shall: (1) Be in writing and signed by the person making the request; (2) describe the particular record to be amended with sufficient specificity to permit the record to be located among those maintained by the Commission; and (3) specify the nature of the amendment sought and the justification for the requested change. The person making the request may be required to provide the information specified in §§ 1007.3 and 1007.4 in order to simplify identification of the record and permit verification of the identity of the person making the request for amendment.

(c) Receipt of a request for amendment will be acknowledged in writing within ten days (excluding Saturdays, Sundays and legal public holidays); except that if the individual is given notice within the ten-day period that his or her request will or will not be complied with, no acknowledgement is required.

(d) Assistance in preparing a request to amend a record may be obtained from the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, D.C. 20423.

(e) Upon receipt of a request for amendment the Privacy Officer or a person designated by him shall promptly determine whether the record is materially inaccurate, incomplete, misleading, or is irrelevant or not timely, as claimed by the individual, and, if so, shall cause the record to be amended in accordance with the individual's request.

(f) If the Privacy Officer or designee grants the request to amend the record, the individual shall promptly be advised of the decision and of the action taken, and notice shall be given of the correction and its substance to each person or agency to whom the record had previously been disclosed, as shown on the record of disclosures maintained in accordance with § 1007.6(b).

(g) If the Privacy Officer or designee disagrees in whole or in part with a request for amendment of a record, the individual shall promptly be notified of the complete or partial denial of his request and the reasons for the refusal. The individual shall also be notified of the procedures for administrative review by the Chairman of any

complete or partial denial of a request for amendment, which are set forth in § 1007.9.

(h) If a request is received for amendment of a record prepared by another agency which is in the possession or control of the Commission, the request for amendment will be forwarded to that agency. If that agency determines that the correction should be made, the Commission will amend its records accordingly and notify the individual making the request for amendment of the change. If the other agency declines to make the amendment, the Privacy Officer or designee will independently determine whether the amendment will be made to the record in the Commission's possession or control, considering any explanation given by the other agency for its decision.

§ 1007.9 Appeals to the Chairman.

(a) Any individual may petition the Chairman:

(1) To review a refusal to comply with an individual request for access to records pursuant to the Privacy Act (5 U.S.C. 552a(d)(1)), and §§ 1007.3 and 1007.5 in this part;

(2) To review denial of a request for amendment made pursuant to § 1007.8;

(3) To correct any determination that may have been made adverse to the individual based in whole or in part upon inaccurate, irrelevant, untimely or incomplete information; and,

(4) To correct a failure to comply with any other provision of the Privacy Act and the rules of this Part 1007, which has had an adverse effect on the individual.

(b) The petition to the Chairman shall be in writing and shall: (1) State in what manner it is claimed the Commission or any Commission employee has failed or refused to comply with provisions of the Privacy Act or of the rules contained in this Part 1007, and (2) set forth the corrective action the petitioner wishes the Commission to take. The petitioner may, if he or she wishes, state such facts and cite such legal or other authorities as are considered appropriate.

(c) The Chairman will make a determination of any petition filed pursuant to this subsection within thirty days (excluding Saturdays, Sundays and legal public holidays) after receipt of the petition, unless for good cause shown, the Chairman extends the 30-day period. If a petition is denied, the petitioner will be notified in writing of the reasons for such denial, and the provisions for judicial review of that determination which are set forth in section 552a(g) (1)(A) and (2)(A), of Title 5 of the United States Code and the provisions for disputed records set forth in paragraph (d) of this section.

(d) If, after review, the Chairman declines to amend the records as the individual has requested, the individual may file with the Privacy Officer a concise statement setting forth why he or she disagrees with the Chairman's denial of the request. Any subsequent disclosure containing information about which a statement of disagreement has been filed shall clearly note the portion which is disputed and include a copy of a concise statement explaining its reasons for not making the amendments requested. Prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained.

§ 1007.10 Information supplied by the Commission when collecting information from an individual.

The Commission will inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of:

(a) The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(b) The principal purpose or purposes for which the information is intended to be used;

(c) The routine uses which may be made of the information, as published in the FEDERAL REGISTER; and,

(d) The effects on the individual of not providing all or any part of the requested information.

§ 1007.11 Public notice of records systems.

(a) The Commission will publish in the FEDERAL REGISTER, at least annual-

ly, a notice of the existence and character of each of its system of records, which notice shall include:

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and purpose of such use;

(5) The policies and practices of the Commission regarding storage, retrievel, access controls, retention, and disposal of the records;

(6) The title and business address of the Commission official who is responsible for the system of records;

(7) The procedures whereby an individual can be notified at his or her request if the system of records contains a record pertaining to that individual;

(8) The procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to that individual contained in the system of records, and how the content of the record can be contested; and,

(9) The categories of sources of records in the system.

(b) Copies of the notices as printed in the FEDERAL REGISTER will be available in each office of the Commission. Mail requests should be directed to the Privacy Officer, Office of the Managing Director, Interstate Commerce Commission, Twelfth Street and Constitution Avenue NW., Washington, D.C. 20423. The first copy will be provided free of charge; additional copies are subject to charge provided for in paragraph (e) of this § 1007.5.

§ 1007.12 Exemptions.

(a) Investigatory materials compiled for law enforcement purposes are exempt from portions of the Privacy Act of 1974 and of these rules on the basis and to the extent that individual access to these files could impair the effectiveness and orderly conduct of the Commission's enforcement program. *Provided, however,* That if any individual is denied any right, privilege, or benefit to which he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such materials shall be provided to the individual; except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with or contracts with the Commission are exempt from portions of the Privacy Act of 1974 and of these rules to the extent that it identifies a confidential source. This is done in order to encourage persons from whom information is sought to provide information to the Commission which, absent assurances of confidentiality, they might otherwise be unwilling to give. However, if practicable, material identifying a confidential source shall be extracted or summarized in a manner which protects the source, and the summary or extract shall be provided to the requesting individual.

PART 1008—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

Sec.

1008.1 Applicability.
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1008.3 Filing and processing claims.
1008.4 Documentation of claims.
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1008.6 Claim records.
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1008.8 Disposition of claims.
1008.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

AUTHORITY: Secs. 553 and 559 of the Administrative Procedure Act (5 U.S.C. 553 and 559) and secs. 204(a)(6), 204a, 208(a), 216(b), 217(b), 404(a), 405(c), 406a, 410(e), and 417(a) of the Interstate Commerce Act.

SOURCE: 43 FR 41040, Sept. 14, 1978, unless otherwise noted.

§ 1008.1 Applicability.

The regulations set forth in this part govern the processing of claims for overcharge, duplicate payment, or overcollection for the transportation of property in interstate or foreign commerce by motor common carriers and freight forwarders subject to part II or IV of the Interstate Commerce Act.

§ 1008.2 Definitions.

(a) "Carrier" means a motor common carrier or freight forwarder subject to part II or IV or the Interstate Commerce Act.

(b) "Overcharge" means an overcharge as defined in sections 204a(6) and 406a(6) of the Interstate Commerce Act. It also includes duplicate payments as defined in paragraph (c) of this section and overcollections as defined in paragraph (d) of this section when a dispute exists between the parties concerning such charges.

(c) "Duplicate payment" means two or more payments for transporting the same shipment. Where one or more payment is not in the exact amount of the applicable tariff rates and charges, refunds shall be made on the basis of the excess amount over the applicable tariff rates and charges.

(d) "Overcollection" means the receipt by a household goods carrier of a payment in excess of the transportation and/or accessorial charges applicable to a particular shipment of household goods, as defined in part 1056 of this chapter, under tariffs lawfully on file with this Commission.

(e) "Unidentified payment" means a payment which a carrier has received but which the carrier is unable to match with its open accounts receivable or otherwise identify as being due for the performance of transportation services.

(f) "Claimant" means any shipper or receiver, or its authorized agent, filing a request with a carrier for the refund of an overcharge, duplicate payment, or overcollection.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 66832, Nov. 21, 1979]

§ 1008.3 Filing and processing claims.

(a) A claim for overcharge, duplicate payment, or overcollection shall not be paid unless filed in writing with the carrier that collected the transportation charges. The collecting carrier shall be the carrier to process all such claims. When a claim is filed with another carrier that participated in the transportation, that carrier shall transmit the claim to the collecting carrier within 15 days after receipt of the claim. If the collecting carrier is unable to dispose of the claim for any reason, the claim may be filed with or transferred to any participating carrier for final disposition.

(b) A single claim may include more than one shipment provided the claim on each shipment involves: (1) The same tariff issue or authority or circumstances, (2) single line service by the same carrier, or (3) service by the same interline carriers.

§ 1008.4 Documentation of claims.

(a) Claims for overcharge, duplicate payment, or overcollection shall be accompanied by sufficient information to allow the carriers to conduct an investigation and pay or decline the claim within the time limitations set forth in § 1008.8. Claims shall include the name of the claimant, its file number, if any, and the amount of the refund sought to be recovered, if known.

(b) Claims for overcharge shall be accompanied by the original freight bill. Additional information may include, but is not limited to, the following:

(1) The rate, classification, or commodity description or weight claimed to have been applicable.

(2) Complete tariff authority for the rate, classification, or commodity description claimed.

(3) Freight bill payment information.

(4) Other documents or data which is believed by claimant to substantiate the basis for its claim.

(c) Claims for duplicate payment and overcollection shall be accompanied by the original freight bill(s) for which charges were paid and by freight bill payment information.

(d) Regardless of the provisions of paragraphs (a), (b), and (c) of this section, the failure to provide sufficient information and documentation to allow a carrier to conduct an investigation and pay or decline the claim within the allowable time limitation shall not constitute grounds for disallowance of the claim. Rather, the carrier shall comply with § 1008.5(c) to obtain the additional information required.

(e) A carrier shall accept copies instead of the orginal documents required to be submitted in this section where the carrier is furnished with an agreement entered into by the claimant which indemnifies the carrier for subsequent duplicate claims which might be filed and supported by the original documents.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 4679, Jan. 23, 1979]

§ 1008.5 Investigation of claims.

(a) Upon receipt of a claim, whether written or otherwise, the processing carrier shall promptly initiate an investigation and establish a file, as required by § 1008.6.

(b) If a carrier discovers an overcharge, duplicate payment, or overcollection which has not been the subject of a claim, it shall promptly initiate an investigation and comply with the provisions in § 1008.9.

(c) In the event the carrier processing the claim requires information or documents in addition to that submitted with the claim, the carrier shall promptly notify the claimant and request the information required. This includes notifying the claimant that a written claim must be filed before the carrier becomes subject to the time limits for settling such a claim under § 1008.8.

§ 1008.6 Claim records.

At the time a claim is received the carrier shall create a separate file and assign it a successive claim file number and note that the number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the written acknowledgment of receipt required under § 1008.7. If pertinent to the disposition of the claim, the carrier shall also note that number on the shipping order and delivery receipt, if any, covering the shipment involved.

§ 1008.7 Acknowledgment of claims.

Upon receipt of a written claim, the carrier shall acknowledge its receipt in writing to the claimant within 30 days after the date of receipt except where the carrier shall have paid or declined in writing within that period. The carrier shall include the date of receipt in its written acknowledgment and shall also enter this date on the face of the written claim which shall be placed in the file for that claim.

§ 1008.8 Disposition of claims.

The processing carrier shall pay, decline to pay, or settle each written claim within 60 days after its receipt by that carrier, except where the claimant and the carrier agree in writing to a specific extension based upon extenuating circumstances. If the carrier declines to pay a claim or makes settlement in an amount different from that sought, the carrier shall notify the claimant, in writing, of the reason(s) for its action, citing tariff authority or other pertinent information developed as a result of its investigation.

§ 1008.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

(a) (1) Carriers shall establish procedures for identifying and properly applying all unidentified payments. If a carrier does not have sufficient information with which properly to apply such a payment, the carrier shall notify the payor of the unidentified payment within 60 days of receipt of the payment and request information which will enable it to identify the payment. If the carrier does not receive the information requested within 90 days from the date of the notice, the carrier may treat the unidentified payment as a payment in fact of freight charges owing to it. Following the 90-day period, the regular claims procedure under this part shall be applicable.

(2) Notice shall be in writing and clearly indicate that it is a final notice and not a bill. Notice shall include: The check number, amount, and date; the payor's name; and any additional basic information the carrier is able to provide. The final notice also must inform payor that: (i) Applicable regulations allow the carrier to conditionally retain the payment as revenue in the absence of a timely response by the payor; and (ii) following the 90-day period the regular claims procedure shall be applicable.

(3) Upon a carrier's receipt of information from the payor, the carrier shall, within 14 days: (i) Make a complete refund of such funds to the payor; or (ii) notify the payor that the information supplied is not sufficient to identify the unapplied payment and request additional information; or (iii) notify the payor of the carrier's determination that such payment was applicable to particular freight charges lawfully due the carrier. Where no refund is made by the carrier, the carrier shall advise the payor of its right to file a formal claim for refund with the carrier in accordance with the regular claims procedure under this part.

(b) When a carrier which participates in a transportation movement, but did not collect the transporation charges, finds that an overpayment has been made, that carrier shall immediately notify the collectiong carrier. When the collecting carrier (when single or joint line haul)discovers or is notified by such a participating carrier that an overcharge, duplicate payment, or overcollection exists for any tranportation charge which has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment. The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the person that made duplicate payment within 30 days from the date of such discovery or notification.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 66832, Nov. 21, 1979]

PART 1010—COMPETITIVE BIDS

Sec.

1010.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.
1010.2 Opening of bids; bonds; form and contents of bids.
1010.3 Considerations for acceptance of bids; rejection; readvertising for new bids.
1010.4 Statement of the transaction.
1010.5 Examination.
1010.7 Carriers subject to the Interstate Commerce Act.

AUTHORITY: Sec. 10, 38 Stat. 734; 15 U.S.C. 20, unless otherwise noted.

SOURCE: 32 FR 20013, Dec. 20, 1967, unless otherwise noted.

§ 1010.1 Specifications, form of proposal and contract; publication of request for bids; variation from the generally applicable procedure.

(a) When any carrier, subject to the Interstate Commerce Act, is required by section 10 of the Clayton Antitrust Act (38 Stat. 734; 15 U.S.C. 20) to call for bids for securities, supplies, or other articles of commerce, or for the construction or maintenance of any kind or part of its carrier property such carrier shall prepare specifications, form of proposals and contract, setting forth clearly and so far as applicable in each case in detail a description or descriptions of the matters and things for which bids are requested, the terms, times and conditions of delivery and payment, the place or places where delivery or performance is to be made, the character, amount, and terms of securities offered or sought, and a full description of the supplies or other articles required or offered for sale, hypothecation, or purchase, and shall make and attach to such specifications such maps, drawings, and illustrations and state such other substantial facts or conditions as are or may be necessary to a full understanding of the premises and procedure by bidders. Such specifications, drawings and illustrations in each case shall be kept open at the principal office or offices of the carrier for full examination, free of charges, by persons desiring to exam-

ine the same with a view to bidding, and, upon request, such carrier shall furnish to any person or persons desiring the same true and accurate copies of such specifications, maps, drawings and illustrations; *Provided,* That the carrier may make a charge for such copies so furnished, the charge not to exceed the reasonable cost of making and forwarding the copies requested.

(b) The carrier shall publish in each case a request for bids in at least two daily newspapers of general circulation, at least two publications in each week for 2 weeks, the first publication to be at least 2 weeks immediately preceding the day when the bids are to be submitted; one such newspaper shall be published or shall be of general circulation in the city or town where the principal operating office of the carrier is located and the other newspaper shall be published in one other of the following cities nearest to the operating or financial office of the carrier or the place where the contract is to be performed, namely: New York, N.Y., Boston, Mass., Chicago, Ill., St. Louis, Mo., Atlanta, Ga., San Francisco, Calif., and Portland, Oreg.; and a printed copy of the published notice in each case shall be posted in plain view, for 2 weeks immediately preceding the day on which bids are to be received, on a bulletin board, designated for that purpose, in a public and conspicuous place in the building where the principal operating office of the carrier is located.

(1) Such published notices shall describe in general but intelligible terms the proposed contract, giving its serial number, and the special matter or things for which bids are requested, and the date and time at or before which the bids must be submitted, and the person by whom and the office at which the bids submitted will be received and opened as provided in this part. The carrier may in said notice reserve the right to reject, any and all bids and may, at its option, require each bidder to tender a bond in a reasonable sum to be therein named, with sufficient surety or sureties conditioned upon the faithful and prompt performance of the terms of the contract.

(c) Upon application, a carrier owned or operated by any state or by an agency of one or more states, or a wholly-owned subsidiary corporation thereof, may be authorized by the Commission to employ a competitive bidding procedure or procedures varying from the generally applicable procedure provided by this regulation upon the following showing: (1) That the applicant carrier is owned or operated by a state or by an agency of one or more states, or is a wholly-owned subsidiary corporation thereof; (2) a detailed statement of the procedure for which authorization is requested and the variations thereof from the generally applicable procedure provided by this regulation and the purpose or reason for such variation; and (3) that the generally applicable procedure provided by this regulation imposes on the carrier an unreasonable burden or interferes with obtaining by the carrier of the most favorable bid.

(Secs. 201-227, 49 Stat. 543-567, as amended; 49 U.S.C. 301-327; sec. 12, 24 Stat. 383, as amended; sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 12, 20)

[32 FR 20013, Dec. 20, 1967, as amended at 40 FR 56669, Dec. 4, 1975]

§ 1010.2 Opening of bids; bonds; form and contents of bids.

(a) Every bid to receive consideration shall be submitted at the place and at or before the hour specified in the notice for the receipt of bids. The time specified may be any hour from 10:00 a.m. until 3:00 p.m. of any business day, and the bids shall be opened after the specified hour and before six o'clock on the day and at place and by the person or persons designated in the notice. Each bidder may attend in person or by duly authorized representative at the opening of the bids, and shall be afforded an opportunity to do so and to examine each bid. The bids shall forthwith be tabulated in conformity with the form of proposal prepared and a copy of such tabulation shall be promptly furnished to any bidder or his authorized representative upon application therefor.

(b) When required by the notice, each bid shall be accompanied by tender of a bond in the amount specified in the notice with sufficient surety or sureties conditioned upon

the faithful and prompt performance of the proposed contract. A bond shall be required only in cases where the notice for bids expressly calls for a bond.

(c) Each bid shall be enclosed with accompanying papers in a plain envelope securely sealed bearing no indication of the name of the bidder or the amount of the bid, and shall be marked "Bid under proposed contract No. ——," and shall be addressed to the officer of the carrier designated in the notice to receive the name.

(d) Each bid shall state the name and address of the bidder and, if the bidder be a corporation, the names and addresses of the officers, directors and general manager thereof and of the purchasing or selling officer or agent in that transaction and, if the bidder is a firm, partnership or association, the bid shall give the names and addresses of each member thereof, and of the manager, purchasing or selling officer or agent in that transaction.

[32 FR 20013, Dec. 20, 1967, as amended at 40 FR 56669, Dec. 4, 1975]

§ 1010.3 Considerations for acceptance of bids; rejection; readvertising for new bids.

After receiving and opening bids as aforesaid, the carrier receiving the same shall within 48 hours in cases where the sale or purchase of securities is the undertaking, and within 21 days where bids are for supplies, equipment, other articles of commerce and for construction or maintenance work, accept the most favorable bid considering (a) the lowest price or prices for the supplies, equipment, and other articles of commerce, and for the construction or maintenance work, described in the advertisement, and the highest price or prices offered for any securities or property, so described, for sale by the carrier, and (b) the ability and reliability of the bidder, financial and otherwise, to deliver the property or to perform the work or transaction, or to pay for the securities, described in the advertisement, giving due consideration to any bond or security tendered by the bidder. If the right be reserved in the notice all bids may be rejected and the carrier may readvertise for bids. The carrier shall notify the successful bidder of the acceptance of his or its bid, and the bidder shall within 10 days execute the required contract, and, if required by the notice, execute a good and sufficient bond for the faithful and prompt performance of the contract. In case the successful bidder shall neglect or fail within said time to execute the contract or bond as aforesaid the carrier may within 5 days award the contract to the next most favorable bidder, ascertained as herein provided for determining the most favorable bidder. If neither the most favorable bidder nor the next most favorable bidder shall execute a contract and qualify as aforesaid, the carrier shall readvertise for new bids.

§ 1010.4 Statement of the transaction.

Each carrier after having made and executed a contract as and in the manner above specified shall within 30 days after the execution of such contract file with the Interstate Commerce Commission a statement of the transaction giving, (a) a copy of the published notice; (b) the names of all bidders, and, if the bidder be a corporation, the names and addresses of the officers, directors and general managers thereof and of the purchasing or selling officer or agent in that transaction, or if the bidder be a partnership or firm, the names and addresses of the members of the firm, the general manager and purchasing or selling agent thereof, and the total amount of each bid; (c) the name of the bidder to whom the contract was awarded together with a copy of the contract; and (d) if any other than the lowest or the highest bid, as the case may be, is accepted as being most favorable to the carrier, the reasons for such acceptance. The statement shall be made in typewriting, in pamphlet form on pages not less than 8 by 10½ inches in size nor greater than 9½ by 12 inches, in size, bound on the longer edge of the page, the paper to be of durable quality fit for permanent record.

§ 1010.5 Examination.

In the case of each bid so taken as aforesaid, the carrier shall preserve and keep open for examination by the Interstate Commerce Commission or any duly authorized examiner thereof, (a) a copy of the resolution or order of the Board of Directors, Executive Committee, or officers of the said common carrier specifying the purposes and terms of the contract for which the bids were invited; (b) a copy of the specifications, maps, drawings, and illustrations upon which bids were made; (c) copies of the notices published, sworn to by or on behalf of the publisher of each paper, respectively, giving the dates and times of publication; (d) the original bids received, designating the bid accepted and giving a statement of the reasons for accepting the same; (e) a copy of the contract entered into between the carrier and the accepted bidder, together with a copy of the bonds if any; (f) references by number of volume and page to the records of proceedings of the stockholders, directors, or executive committee of the carrier. The files in each transaction shall be securely fastened together and given the contract number and each document therein shall be numbered consecutively and at the conclusion there shall be a sworn statement by the president, a vice president, or the general manager of the carrier, stating that the files in No. ———— contain true and complete records and statements of all the negotiations had in connection with the contract therein set forth. Carriers subject to the requirements of section 10 of the Clayton Antitrust Act, 15 U.S.C. 20 may destroy such contracts or other records required thereby 10 years after the expiration thereof, without permission of the Commission: *Provided,* There is no litigation pending involving these records: *And further provided,* That the carrier has informed the Commission of its intended action at least 2 weeks prior to the date the records are to be destroyed.

(Secs. 201-227, 49 Stat. 543-567, as amended; sec. 12, 24 Stat. 383, as amended; sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 301-327, 12-20)

§ 1010.7 Carriers subject to the Interstate Commerce Act.

(a) The regulations prescribed in this part are hereby made applicable, on and after January 29, 1938, to all common carriers subject to part II of the Interstate Commerce Act.

(Secs. 201-227, 49 Stat. 543-567, as amended; 49 U.S.C. 301-327)

(b) The regulations prescribed in this part shall apply, on and after the first of May 1942, to all common carriers subject to Part III of the Interstate Commerce Act.

(Secs. 12, 20, 24 Stat. 383, as amended, 386, as amended; 49 U.S.C. 12, 20)

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

Sec.

1011.1 General.
1011.2 The Commission.
1011.3 Divisions of the Commission.
1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.
1011.5 Delegations to individual Commissioners.
1011.6 Employee Boards.
1011.7 Delegation of authority by the Chairman of the Interstate Commerce Commission.
1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

AUTHORITY: Interstate Commerce Act, 49 U.S.C. 1 et seq., and especially 49 U.S.C. 17; in Reorganization Plan No. 1 of 1969, 5 U.S.C. Appendix (38 Stat. 59); and in 5 U.S.C. 553(b)(A).

SOURCE: 42 FR 65181, Dec. 30, 1977, unless otherwise noted.

§ 1011.1 General.

(a) This part describes the organization of the Commission, and the assignment of jurisdiction and responsibilities to the Commission, divisions of the Commission, individual Commissioners, and employee boards.

(b) As used in this part "matter" includes any case, proceeding, question, or other matter within the Commission's jurisdiction; "decision" includes any decision, ruling, order, or requirement of the Commission, a division, a

single Commissioner, or an employee board; and "Act" means the Interstate Commerce Act, 49 U.S.C. Section 1 et seq.

§ 1011.2 The Commission.

(a) The Commission reserves to itself for consideration and disposition—

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Commission, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Commission.

(4) Matters involving inconsistent decisions by the divisions.

(5) All cases involving general rate increases as defined in 49 CFR Parts 1102 and 1104, as well as similar increases affecting modes of transportation not specifically referred to in those parts; all matters arising under section 1(16)(b) of the act; all cases arising under section 5(2) of the act involving a class I railroad where the matter has involved the taking of testimony at an oral hearing; and all cases arising under section 5(3) of the act.

(6) Except for matters assigned to the Chairman of the Commission under § 1011.5(a)(7), (i) the determination whether to reconsider a decision being challenged in court; (ii) the disposition of matters which have been the subject of an adverse decision by a court; and (iii) the determination whether to file any memorandum or brief on behalf of the Commission as amicus curiae in any court.

(7) The decision of all matters found to involve issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(b) The Commission may bring before it any matter assigned to a division, a single Commissioner, or any employee board. It may assign any matter reserved to it to a division for administrative handling or decision or both.

[42 FR 65181, Dec. 30, 1977, as amended at 43 FR 30804, July 18, 1978]

§ 1011.3 Divisions of the Commission.

(a) There are two divisions of the Commission, each with three members, designated as division 1 and division 2.

(b) The divisions have concurrent original and appellate jurisdictions over all matters submitted for decision of the Commission except those reserved to the Commission or assigned to a single Commissioner or an employee board.

(c) Where the Commission's rules permit an appeal to a division from a decision rendered by a division, the appeal shall be heard by the same Commissioners who constituted the division which made the decision appealed from.

(d) Assignment of matters to the divisions shall be made so as to equalize their work to the extent practicable. Proceedings with odd-numbered docket numbers (or "sub-numbers" in sub-numbered proceedings) are assigned to one division, and those with even-numbered docket numbers (or sub-numbers) to the other. In the case of consolidated proceedings, the final digit of the earliest proceeding filed governs the assignment. Proceedings related to other previously assigned proceedings are assigned to the same division.

(e) A division may certify to the Commission any matter assigned to it.

(f) Division assignments are made as follows:

(1) Division chairmanships are filled according to seniority of service among those Commissioners requesting such assignments, except that the Chairman and Vice Chairman of the Commission are not eligible to serve as division chairmen.

(2) Each Commissioner, other than the Chairman of the Commission and the Chairmen of the divisions, is assigned to a division by lot.

(3) Membership of the divisions is changed to become effective on January 1 and July 1 of each year.

(g) The members of a division, who were members when an oral argument was held, a draft report or order was circulated, or a matter first came

under active consideration by the division, constitute the division designated to act on that matter.

(h) Divisions as constituted prior to January 1, 1978, shall remain in existence for the purpose of disposing of matters circulated to them, or which have been the subject of oral argument, before that date.

§ 1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.

(a)(1) The Chairman of the Commission is appointed by the President as provided by Reorganization Plan No. 1 of 1969. The Chairman has the authority, duties, and responsibilities assigned to him under that Plan and described in this part.

(2) The Vice Chairman is elected by the Commission for the term of one calendar year.

(3) In the absence of the Chairman, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the absence of the Vice Chairman, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Commissioner present, based on time of continuous service as a member of the Commission, is Acting Chairman, and has the authority and responsibilities of the Chairman and the Vice Chairman.

(b)(1) The Chairman is the executive head of the Commission and has general responsibility for (i) the over-all management and functioning of the Commission, (ii) the formulation of plans and policies designed to assure the effectiveness of the Commission in the administration of the Interstate Commerce Act and related Acts, (iii) prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems, and (iv) the development and utilization of effective staff support to carry out the duties and functions of the Commission. All heads of bureaus and offices report to the Chairman.

(2) Subject to the provisions of Reorganization Plan No. 1 of 1969, the Chairman of the Commission exercises the executive and administrative functions of the Commission, including (i) the appointment, supervision, and removal of personnel employed by the Commission, except those in the immediate offices of Commissioners other than the Chairman, subject to Civil Service rules and regulations, (ii) the distribution of business among such personnel and among administrative units of the Commission, and (iii) the use and expenditure of funds.

(3) In carrying out his functions the Chairman is governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Commission.

(c) (1) The Chairman presides at all sessions of the Commission and sees that every vote and official act of the Commission required by law to be recorded is accurately and promptly recorded by the Secretary or the person designated by the Commission for that purpose.

(2) Except regular sessions, which are provided for by regulations prescribed by the Commission, the Chairman may call the Commission into special session whenever in his opinion any matter or business of the Commission so requires. He shall call a special session for the consideration of any matter or business on request of a majority of the members.

(3) The Chairman exercises general control over the Commission's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and spokesman for the Commission in all matters where an official expression of the Commission is required.

(5) The Chairman brings to the attention of any Commissioner, division, or board any delay or failure in the work under his, her, or its supervision and initiates ways and means of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or ad hoc committees of the Commission as he considers necessary.

(7) In accordance with Section 1003(a) of the Federal Aviation Act of

1958, 49 U.S.C. 1483, the Chairman, when the occasion arises, in conjunction with corresponding action by the Chairman of the Civil Aeronautics Board, designates a like number of Commissioners to function as members of a joint board to consider and pass on matters referred to it as provided under subsection (c) of that section.

(8) The Chairman may reassign related proceedings to a single division or board of employees and may remove a matter from a division, a single Commissioner, or an employee board for consideration and disposition by the Commission.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Commission to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the Commission's own motion, and their discontinuance at any time prior to hearing, except for investigations under sections 15(7), 216(g), 218(c), 307 (g) and (i), or 406(e) of the Act.

(11) The Chairman approves for publication all publicly-issued documents by a bureau or office, except (i) publications authorized or adopted by the Commission, a division, or a single Commissioner that involve decisions in formal proceedings; (ii) decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and (iii) documents prepared for court cases or for introduction into evidence in a formal proceeding.

§ 1011.5 Delegations to individual Commissioners.

(a) The following matters are referred to the Chairman of the Commission:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided in Rule 95 of the General Rules of Practice (49 CFR 1100.95).

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Commission.

(6) Matters relating to closing of transactions in accordance with conditions prescribed by the Commission under Part V of the Act, including the execution on behalf of the Commission of contracts and other instruments incident to the closing of such transactions; and matters relating to the administration of loans and other financing guaranteed under Part V of the Act, including the giving of consents by the Commission under guaranty agreements and the construction of provisions contained in those agreements and other agreements entered into in connection with those loans or other financing.

(7) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of (i) a decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Commission personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure, or (ii) a decision in which a court finds under 5 U.S.C. 552a(g)(4) that Commission personnel acted intentionally or willfully in violating the provisions of the Privacy Act.

(b) The following matters are referred to the Vice Chairman of the Commission:

(1) Matters within the jurisdiction of the Accounting Board and the Valuation Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Reduced rates authorizations in cases of calamitous visitation under 49 U.S.C. 10721 and, in related matters, relief from the provisions of 49 U.S.C. 10730 and the long and short haul restrictions of 49 U.S.C. 10726.

(c) The Chairman, Vice Chairman, or any other Commissioner may certify to the Commission any matter assigned to him or her under this part.

(d) The Chairman shall give notice to all Commissioners that a petition for a stay has been referred to him or her for disposition pursuant to the delegation of authority in paragraphs (a)(2) and (a)(3) of this section. The Chairman shall also advise all Commissioners of his or her decision on the petition. At the request of a Commissioner, made at any time before the Chairman's decision is served, the petition will be referred to the Commission for decision.

(49 U.S.C. 10321)

[42 FR 65181, Dec. 30, 1977, as amended at 43 FR 30804, July 18, 1978; 44 FR 12426, Mar. 7, 1979; 45 FR 5739, Jan. 24, 1980; 45 FR 28143, Apr. 28, 1980; 45 FR 45526, July 3, 1980; 45 FR 64959, Oct. 1, 1980]

§ 1011.6 Employee Boards.

The following matters are assigned to boards of employees. Except as provided in paragraph (g) of this section, a board may certify any matter assigned to it to the Commission.

(a) *Suspension and Fourth Section Board.* (1) Matters arising under sections 15(7), 15(8), 216(g), 218(c), 307 (g) and (i), and 406(e) of the Act: The Board is authorized (i) initially to dispose of these matters, by declining to suspend a rate or a classification, rule, or practice related to a rate, or by suspending such rate, classification, rule, or practice and ordering an investigation; (ii) to institute investigations into rates, fares, charges, and practices of regulated carriers; and (iii) prior to the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled. This delegation of authority does not include authority over petitions or requests, relating to rates, classifications, rules or practices filed in purported compliance with decisions of the Commission or a division, or actions in connection with suspensions to be taken during or after formal hearings or investigations.

(2) Matters arising under section 4 of the Act, except proceedings made subject of formal hearing, matters prompted by an order of requirement of the Commission or a division, or matters arising from general increase proceedings.

(b) *Finance Board.* (1) Determination of applications, under: (i) Sections 20a (1) through (11) and 214 of the Act relating to securities when not connected with an application under section 1a, 5(2), or 5(3), and (ii) section 20a(12), for authority to hold the position of officer or director of more than one corporation, provided that these applications have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(2) A matter referred to the Finance Board that is subsequently assigned for taking testimony at a public hearing shall be withdrawn from the Board.

(c) *Operations Boards.* (1) Insurance Board:

(i) Matters arising under section 211(c) of the Act, relating to bonds or other security to assure financial responsibility of brokers; section 215, with respect to the furnishing by motor carriers of bonds, insurance, or other security, for the protection of the public; except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(ii) Matters arising under section 221(a) and (c) of the Act relating to the designation by motor carriers and brokers of persons on whom orders and notices may be served and the designation of agents upon whom service of process may be made, except matters imvolving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(iii) Matters arising under Section 11711 of the Act insofar as they relate to reviewing and approving claim dispute settlement programs submitted by motor common carriers of household goods, and to revoking or suspending approval of such programs should a carrier (or carriers) fail to meet the statutory requirements of Section 11711; provided, however, that the Insurance Board shall certify a

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representative sampling of proposed dispute settlement programs to the Commission.

(2) Motor Carrier Leasing Board. Matters arising under sections 204 (e) and (f) and 204(a)(6) of the Act, insofar as they relate to the lease and interchange of vehicles by motor carriers, and the lease and interchange regulations (49 CFR Part 1057), except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(3) Railroad Service Board. Matters relating to car-service except controversies between carriers as to compensation, under provisions of sections 1 (15) and (16)(a) which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) Revocation Board. Entry of show cause orders under sections 204(c) and 212(a) of the Act directed to motor carriers who have failed to file annual reports; determination of uncontested motor carrier broker, water carrier, and freight forwarder, suspension, change or revocation proceeding under sections 212(a), 312(a) and 410(f) of the Act which have not ivolved taking testimony at a public hearing.

(5) Any matter referred to an Operations Board that is subsequently assigned for taking testimony at a public hearing shall be withdrawn from the Board.

(6) The Railroad Service Board will establish and oversee modified hearing procedures associated with the implementation of Section 226 of the Staggers Rail Act of 1980, Pub. L. 96-448. Section 226 revises Section 11123(a) of Title 49, United States Code, and provides for issuance of extensions of emergency service orders by the full Commission under that Section. Each order issued pursuant to the revised Section will contain a notice of the hearing procedures to be followed with respect to any extension of that order.

(d) *Special Permission Board.* Special permission or other permissible waivers of rules regarding tariffs or schedules, under sections 6(3), 217(c), 218(a), 306(d), 306(e), and 405(d) of the Act, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(e) *Released Rates Board.* Matters arising under sections 20(11), 219, and 413 of the Act insofar as they relate to applications for authorization to establish released rates and ratings that have not involved taking testimony at a public hearing or the submission of evidence affidavits.

(f) *Review Boards Nos. 1, 2, 3, 4, and 5.* (1) Except as provided in paragraph (f)(2) of this section, determination of matters not expressly reserved to the Commission or assigned to another employee board, other than those proceedings in which a Commissioner or a member of the Board has presided at the hearing or issued an initial decision and those proceedings that are considered to be the relatively more important cases, including those which appear to involve issues of general transporation importance. In determining what matters are of relatively greater importance, consideration will be given, among other things, to the significance of the matters involved in terms of impact on, or importance to, the national transporation system; the potential significance of the matter as precedent; the question whether a matter of first impression is involved; and the complexity of the record and the issues involved.

(2) Appellate jurisdiction over railroad matters is limited to (i) rate cases instituted by compliant or petition, including proceedings instituted after referral by the courts and (ii) investigation cases instituted under section 11501 of the Act.

(3) The employee Review Board handling finance matters will determine, in the first instance, and where possible, consolidated applications relating to the transfer of Certificates and permits filed under 49 U.S.C. 10926 which have directly related securities applications filed under 49 U.S.C 11301-11302 and/or directly related conversion applications filed under 49 U.S.C 10922 or 10923.

(4) Determination of applications, which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits, under: (i) Section 204(a)(4) of the Act, relating to transfer of brokers' licenses and changes in control of corporations or associations holding brokers' licenses; (ii) sections 206(a) (6) and (7) relating to transfer of certificates of registration and rights to operate pending determination of applications for certificates of registration; (iii) sections 212(b) and 312 relating to transfer of certificates and permits; and (iv) section 410(g) relating to transfer of permits.

(5) Determination of applications seeking the elimination of gateways, where the applications are filed as matters directly related to applications under section 212(b) of the Act and seek only to eliminate gateways created as a result of a grant of authority in the 212(b) proceeding involving a unification of irregular route operating rights.

(6) Appeals from decisions of the Regional Motor Carrier Boards entered under 49 U.S.C. 10928.

(g) *Accounting and Valuation Board.* (1) Authority: (i) To permit departure from general rules, prescribing uniform systems of accounts for carriers and other persons under the act, and from the regulations to govern the forms and recording of passes for carriers and other persons under parts I and II of the act; (ii) to prescribe rates of depreciation to be used by railroad and water carriers; (iii) to issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the act; (iv) to grant extensions of time for filing annual, periodical, and special reports in matters which do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits; and (v) to issue valuation reports in matters which do not involve taking testimony at public hearings or the submission of evidence by opposing parties in the form of affidavits.

(2) The Board may certify any matter assigned to it to the Vice Chairman of the Commission.

(h) *Tariff Rules Board.* Matters arising under sections 6(6), 217(a), 306(b), and 405(b) of the Act, related to the prescription of regulations concerning the form and manner in which tariffs required to be filed shall be published, filed, and posted, including the institution of rulemaking proceedings for the purpose of prescribing new or changed regulations, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(i) *Tariff Integrity Board:* Determination of complaints alleging that a tariff has been unlawfully established in violation of the Interstate Commerce Act, the Commission's Tariff Regulations, or orders of the Commission or the courts, for which the tariff would have been subject to rejection had the violation been detected before the tariff became effective.

(j) *Special Docket Board.* Determination of Special Docket Proceedings under Rules 23(e) and (f) of the General Rules of Practice and reduced rate matters arising in the cases of calamitous vistation under 49 U.S.C. 10721 and in related matters, to authorize relief from the provisions of 49 U.S.C. 10726, 10730, 11707.

(k) *Regional Motor Carrier Boards.* Matters arising under 49 U.S.C. 10928, relating to applications for temporary authority by common or contract carriers by motor vehicle or water, except matters involving broad questions of policy, matters in which the decision of the Boards would be inconsistent with a decision of the Commission or a division, and matters in which substantially the same question is already before the Commission or a division.

(l) *Restriction Removal Board.* Determination of applications filed under Part 1137 to remove operating restrictions or to broaden under narrow authorizations in outstanding certificates or permits.

(49 U.S.C. 10321)

[42 FR 65181, Dec. 30, 1977, as amended at 43 FR 30804; July 18, 1978; 43 FR 57257, Dec. 7, 1978; 44 FR 12426, Mar. 7, 1979; 44

FR 58514, Oct. 10, 1979; 44 FR 60295, Oct. 19, 1979; 45 FR 3583, Jan. 18, 1980; 45 FR 11812, Feb. 22, 1980; 45 FR 45526, July 3, 1980; 45 FR 64959, Oct. 1, 1980; 45 FR 73076, Nov. 4, 1980; 45 FR 84069, Dec. 22, 1980; 46 FR 3533, Jan. 15, 1981]

§ 1011.7 Delegations of authority by the Chairman of the Interstate Commerce Commission.

(a)(1) This section provides for delegations of authority by the Chairman of the Interstate Commerce Commission to individual employees of the Commission.

(2) The Chairman of the Commission may remove for disposition any matter delegated under this section, and an employee of the Commission may refer any matter delegated to him or her under this section to the Chairman of the Commission for disposition.

(b)(1) Appeals from the decision of employees acting under authority delegated pursuant to this section will be acted upon by the Chairman of the Commission. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(2) The Chairman may, on his or her own motion, review, reverse, or modify any decision of an employee acting under authority delegated under this section.

(c)(1) As used in this paragraph, the term "procedural matter" includes, but is not limited to, the assignment of the time and place of hearing; the assignment of proceedings to Administrative Law Judges; the issuance of orders directing special hearing procedures; the establishment of dates for filing statements in cases assigned for handling under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and of procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include the postponement of the effective date of: (i) Decisions pending judicial review, (ii) decisions of the entire Commission, (iii) cease and desist orders, (iv) orders suspending or revoking operating authority, or (v) final decisions where petitions for discretionary review have been filed under Rule 98(e) of the general rules of practice, 49 CFR 1100.98(e).

(2) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters arising prior to the issuance of an initial decision in proceedings assigned for handling under oral hearing procedure or assigned to an administrative law judge under modified procedure is delegated to the Chief Administrative Law Judge of the Commission. Notwithstanding this delegation, Commissioners, Administrative Law Judges, and Joint Boards appointed under 49 U.S.C. 305 retain the authority to dispose of procedural matters in proceedings assigned to them.

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge, or arising in a proceeding after the issuance of an initial decision of a hearing officer in proceedings which have been the subject of an oral hearing is delegated to the Director of the Office of Proceedings of the Commission. The Director of the Office of Proceedings shall also have authority, unless otherwise ordered by the Chairman in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings.

(d) Except as provided in Rule 66(a) of the general rules of practice, 49 CFR 1100.66(a), authority to dismiss complaints at the request of the complainant, or applications at the request of applicants, is delegated to the Director of the Office of Proceedings and the Chief Administrative Law Judge of the Commission.

(e) The entry of reparation orders, responsive to findings authorizing the filing of statements of claimed dam-

ages as provided in Rule 95 of the general rules of practice (49 CFR 1100.95), is delegated to the Director of the Bureau of Traffic of the Commission.

(f) Authority to grant or deny access to waybills and to statistics reported under orders of the Commission is delegated to the Director of the Bureau of Economics of the Commission.

(g) Certain accounts in the Uniform Systems of Accounts, 49 CFR 1201/1211, require Commission approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director of the Bureau of Accounts, the Assistant Director, and the Chief, Section of Accounting.

(h) Authority, under the Regulatory Flexibility Act (Public Law 96-354), (1) to sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, which will not, if adopted by the Commission, have a significant economic impact on a substantial number of small entities; and (2) to sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis is delegated to the Secretary of the Commission.

(Sec. 2 of Reorganization Plan No. 1 of 1969, 5 U.S.C. Appendix (38 Stat. 59); 49 U.S.C. 10301 and 49 CFR 1011.5(a) (1), (2), (4), and (5))

[43 FR 1091, Jan. 6, 1978, as amended at 43 FR 7438, Feb. 23, 1978; 43 FR 58189, Dec. 12, 1978; 45 FR 86789, Dec. 31, 1980; 46 FR 32449, June 23, 1981]

§ 1011.8 Delegations of Authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(a) *Office of Special Counsel.* (1) There is established an Office to be known as the Office of Special Counsel. (2) The Office shall be headed by an officer to be known as the Special Counsel, who shall be appointed by the Chairman, subject to the approval of a majority of the Commission. (3) The mission of the Office will be to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be adequately explored. (4) The Special Counsel will coordinate the activities of the Office with other Bureaus and Offices and may request their assistance and services. (5) The Special Counsel will choose the proceedings in which to participate as a party in accordance with the mission of the Office. In addition, the Commission on its own initiative, may direct the Special Counsel's participation. (6) So that parties having need of the assistance of the Offices of Special Counsel will be adequately informed, the Office of Hearings is directed, in noticing cases for public hearings, to advise parties of the availability of this program.

[45 FR 48631, July 12, 1980]

PART 1012—MEETINGS OF THE COMMISSION

Sec.

1012.1 General provisions.
1012.2 Time and place of meetings.
1012.3 Public notice.
1012.4 Public participation.
1012.5 Transcripts; minutes.
1012.6 Petitions seeking to open or close a meeting.
1012.7 Meetings which may be closed to the public.

AUTHORITY: 5 U.S.C. 552b(g), as amended by Pub. L. 94-409, 90 Stat. 1241; 49 U.S.C. 17(3), 24 Stat. 385, as amended.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

§ 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Interstate Commerce Commission (Commission), Divisions of the Commission (Division), and standing committees of the Commission are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Commission and of Divisions and committees of the Commission where the Division or committee is empowered to act on the Commission's behalf, but not where a Divi-

sion or committee is meeting only to formulate an internal recommendation to the Commission. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words "meeting" and "conference" are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Commission, a Division, or a committee of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business. They do not include meetings held to determine whether some future meeting should be open or closed to the public. They do not include the deliberations of members of boards of employees of the Commission.

(c) These regulations are not intended to govern situations in which members of the Commission consider individually and vote by notation upon matters which are circulated to them in writing. Copies of the votes or statements of position of all Commissioners eligible to participate in action taken by notation voting will be made available, as soon as possible after the date upon which the action taken is made public or any decision or order adopted is served, in a public reading room or other easily accessible place within the Commission, or upon written request to the Secretary of the Commission.

§ 1012.2 Time and place of meetings.

(a) Conferences, oral arguments, and other meetings are held at the Commission's headquarters building at the northwest corner of 12th Street and Constitution Avenue in Washington, DC, unless advance notice of an alternative site is given. Room assignments for meetings will be posted on the day of the meeting at the Constitution Avenue entrance to the Interstate Commerce Commission building and at the Commission's Public Information Office (room 1211).

(b) Regular Commission conferences are held on the first and third Tuesdays of each month, or on the following day if the regular conference day is a holiday. Oral arguments before the Commission are normally scheduled on the first or third Wednesday of each month. Regular Commission conferences and oral arguments before the Commission or a Division normally begin at 9:30 a.m. A luncheon recess is taken at approximately noon, and other recesses may be called by the presiding officer. Times for reconvening following a recess, or on subsequent days if a conference or oral argument lasts more than one day, are set by the presiding officer at the time the recess is announced.

(c) Special Commission conferences, Division conferences, oral arguments before a Division, and meetings of committees of the Commission are scheduled by the Chairman of the Commission or of the respective Division or committee.

(d) If one or more portions of the same meeting are open to the public while another portion or other portions are closed, all those portions of the meeting which are open to the public are scheduled at the beginning of the meeting agenda, and are followed by those portions which are closed.

§ 1012.3 Public notice.

(a) Unless a majority of the Commission determines that such information is exempt from disclosure under the Act, public notice of the scheduling of a meeting will be given by posting a notice on the bulletin board in the Commission's Public Information Office, by filing a copy of the notice with the Secretary of the Commission for posting and for service on all parties of record in any proceeding which is the subject of the meeting or any other person who has requested notice with respect to meetings of the Commission, and by submitting a copy of the notice for publication in the FEDERAL REGISTER.

(b) Public notice of a scheduled meeting will contain—

(1) The date, time, place, and subject matter of the meeting.

(2) Whether it is open to the public.

(3) If the meeting or any portion of the meeting is not open to the public, an explanation of the action taken in

closing the meeting or portion of the meeting, together with a list of those expected to attend the meeting and their affiliations.

(4) If a vote is taken on the question whether to close a meeting or a portion of a meeting to the public, a statement of the vote or position of each Commissioner eligible to participate in that vote. If such a vote is taken, public notice of its result will be posted within one working day following completion of the voting. If the result of the vote is to close the meeting or a portion of the meeting, an explanation of that action will be included in the notice to be issued within one working day following completion of the voting. The public notice otherwise required by this subparagraph may be withheld if the Commission finds that such information is exempt from disclosure under the Act.

(5) The name and telephone number of the Commission official designated to respond to requests for information about the meeting. Unless otherwise specified, that official will be the Commission's Public Information Officer, whose telephone number is (202) 275-7252.

(c) Except as provided in paragraphs (d) and (e) of this section, public notice will be given at least one week before the date upon which a meeting is scheduled.

(d) Due and timely execution of the Commission's functions will not normally permit the giving on one week's public notice of meetings called to consider or determine whether to suspend or investigate a tariff or schedule under sections 15(7), 15(8), 215(g), 218(c), 307(g), 307(i), or 406(e) of the Interstate Commerce Act (49 U.S.C. 15(7), 15(8), 316(g), 318(c), 907(g), 907(i), 1006(e)); to consider whether to grant special permission to deviate from tariff filing requirements under section 6(3), 217(c), 218(a), 306(d), 306(e), or 405(d) of the Interstate Commerce Act (49 U.S.C. 6(3), 317(c), 318(a), 906(d), 906(e), or 1005(d)); or to consider or dispose of an application for temporary authority under section 210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a) or 911(a)). Such meetings will normally be called on less than one week's notice, and public notice will be posted and published at the earliest practicable time.

(e) If a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of a meeting determines, by recorded vote, that Commission business requires that a meeting be called on less than one week's notice, the meeting may be called on short notice, and public notice will be posted and published at the earliest practicable time.

(f) Changes in the scheduling of a meeting which has been the subject of a public notice will also be made the subject of a public notice, which will be posted at the earliest practicable time. Changes in, or additions to a conference agenda or in the open or closed status of a meeting will be made only if a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of the meeting determines, by recorded vote, that the Commission's business requires such change and that no earlier announcement of the change was possible. In such a case, the public notice of the change, will show the vote of each Commissioner on the change.

§ 1012.4 Public participation.

(a) In the case of Commission or Division conferences or meetings of committees of the public, members of the public will be admitted as observers only. Active participation, as by asking questions or attempting to participate in the discussion, will not be permitted, and anyone violating this proscription may be required to leave the meeting by the presiding officer.

(b) Oral arguments are always open to the public. The scheduling of participants in the arguments and the allotment of time is governed by the Commission's General Rules of Practice, 49 CFE 1100.98.

§ 1012.5 Transcripts; minutes.

(a) A verbatim transcript, sound recording or minutes will be made of all meetings closed to the public under these regulation, and will be retained by the Commission for two years fol-

lowing the date upon which the meeting ended, or until one year after the conclusion of any proceeding with respect to which the meeting was held, whichever occurs later. In the case of meetings closed to the public under § 1012.7(d) (1) through (7) and (9) of this part, a transcript or recording rather than minutes will be made and retained.

(b) The Commission will make available free of charge, upon request, in a public reading room or some other easily accessible place, the minutes, transcript or recording of all portions of any meeting which was closed to the public except those portions which it finds to be properly exempt from disclosure under the Act. A copy of such minutes, transcript or recording will be provided, upon request, upon payment of fees as provided in Part 1002 of this chapter.

(c) In the case of all meetings closed to the public, the presiding officer shall cause to be made, and the Commission shall retain, a statement setting forth—

(1) The date, time, and place of the meeting.

(2) The names and affiliations of those attending.

(3) The subject matter.

(4) The action taken.

(5) A copy of the certification issued by the General Counsel that, in his or her opinion, the meeting was one that might properly be closed to the public.

§ 1012.6 Petitions seeking to open or close a meeting.

(a) The Commission will entertain petitions requesting either the opening of a meeting proposed to be closed to the public or the closing of a meeting proposed to be open to the public. In the case of a meeting of the Commission, the original and 15 copies of such a petition shall be filed, and in the case of a meeting of a Division or committee of the Commission, an original and five copies shall be filed.

(b) A petition to open a meeting proposed to be closed, filed by any interested person, will be entertained.

(c) A petition to close a meeting proposed to be open will be entertained only in cases in which the subject at the meeting would—

(1) Involve accusing a person of a crime or formally censuring a person.

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(3) Disclose trade secrets or commercial or financial information obtained on a privileged or confidential basis.

(4) Disclose investigatory records or information, compiled for law enforcement purposes, to the extent that the production of such records or information would (i) interfere with enforcement proceedings being conducted or under consideration by an agency other than the Commission; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of a confidential investigation agency or a national security intelligence agency; (v) disclose investigative techniques and procedures of an agency other than the Commission; or (vi) endanger the life or physical safety of law enforcement personnel.

(5) Disclose information the premature disclosure of which could lead to significant financial speculation in securities.

(d) Every effort will be made to dispose of petitions to open or close a meeting in advance of the meeting date. However, if such a petition is received less than three working days prior to the date of the meeting, it may be disposed of as the first order of business at the meeting, in which case the decision will be communicated to the petitioner orally through the Commission's Public Information Officer or other spokesperson.

§ 1012.7 Meetings which may be closed to the public.

(a) A meeting may be closed pursuant to this section only if a majority of the Commissioners eligible to participate in the conduct or disposition of the matter which is the subject of the meeting votes to close the meeting.

(b) A single vote may be taken to close a series of meetings on the same particular matters held within 30 days of the initial meeting in the series.

(c) With respect to any meeting closed to the public under this section, the General Counsel of the Commission will issue his or her certification that, in his opinion, the meeting is one which may properly be closed pursuant to one or more of the provisions of paragraph (d) of this section.

(d) Meetings or portions of meetings may be closed to the public if the meeting or portion thereof is likely to—

(1) Disclose matters (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552); *Provided,* That such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets or commercial information obtained from a person and privileged or confidential.

(5) Involve accusing any person of a crime, or formally censuring any person.

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and (in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation) disclose confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Disclose information the premature disclosure of which could (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution.

(9) Disclose information, the premature disclosure of which would be likely significantly to frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed Commission action has already been disclosed to the public by the Commission, or where the Commission is required by law to make such disclosure prior to the taking of final Commission action on such proposal.

(10) Specifically concern the issuance of a subpoena.

(11) Specifically concern the Commission's participation in a civil action or proceeding or an arbitration.

(12) Specifically concern the initiation, conduct, or disposition of a particular case or formal adjudication conducted pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after an opportunity for hearing.

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

Sec.

1013.1 The independence of the trustee of a voting trust.
1013.2 The irrevocability of the trust.
1013.3 Review and reporting requirements for regulated carriers.

AUTHORITY: 49 U.S.C. 10321 and 5 U.S.C. 553.

SOURCE: 44 FR 59909, Oct. 17, 1979, unless otherwise noted.

§ 1013.1 The independence of the trustee of a voting trust.

(a) In order to avoid an unlawful control violation, the independent voting trust should be established

before a controlling block of voting securities is purchased.

(b) In voting the trusteed stock, the trustee should maintain complete independence from the creator of the trust (the settlor).

(c) Neither the trustee, the settlor, nor their respective affiliates should have any officers or board members in common or direct business arrangements, other than the voting trust, that could be construed as creating an indicium of control by the settlor over the trustee.

(d) The trustee should not use the voting power of the trust in any way which would create any dependence or intercorporate relationship between the settlor and the carrier whose corporate securities constitute the corpus of the trust.

(e) The trustee should be entitled to receive cash dividends declared and paid upon the trusteed voting stock and turn them over to the settlor. Dividends other than cash should be received and held by the trustee upon the same terms and conditions as the stock which constitutes the corpus of the trust.

(f) If the trustee becomes disqualified because of a violation of the trust agreement or if the trustee resigns, the settlor should appoint a successor trustee within 15 days.

§ 1013.2 The irrevocability of the trust.

(a) The trust and the nomination of the trustee during the term of the trust should be irrevocable.

(b) The trust should remain in effect until certain events, specified in the trust, occur. For example, the trust might remain in effect until (1) all the deposited stock is sold to a person not affiliated with the settlor or (2) the trustee receives a Commission decision authorizing the settlor to acquire control of the carrier or authorizing the release of the securities for any reason.

(c) The settlor should not be able to control the events terminating the trust except by filing with this Commission an application to control the carrier whose stock is held in trust.

(d) The trust agreement should contain provisions to ensure that no violations of 49 U.S.C. 11343 will result from termination of the trust.

§ 1013.3 Review and reporting requirements for regulated carriers.

(a) Any carrier choosing to utilize a voting trust may voluntarily submit a copy of the voting trust to the Commission for review. The Commission's staff will give an informal, nonbinding opinion as to whether the voting trust effectively insulates the settlor from any violation of Commission policy against unauthorized acquisition of control of a regulated carrier.

(b) Any person who establishes an independent trust for the receipt of the voting stock of carrier must file a copy of the trust, along with any auxiliary or modifying documents, with the Commission.

(c) Any carrier required to file a Schedule 13D with the Securities and Exchange Commission (17 CFR 240.13d-1) which reports the purchase of 5 percent or more of the registered securities of another I.C.C. regulated carrier (or the listed shares of a company controlling 10 percent or more of the stock of an I.C.C. regulated carrier), must simultaneously file a copy of that schedule with this Commission, along with any supplements to that schedule.

(d) Failure to comply with the reporting requirements in paragraphs (b) or (c) of this section will result in denial of the application in which acquisition of control, through the acquisition of the voting stock of another carrier, is sought, unless the applicant shows, by clear and convincing evidence, and the Commission finds, that the failure to comply was unintentional and that denial of the application will substantially and adversely effect the public interest and the national transportation policy.

PARTS 1020–1029—ENFORCEMENT

PART 1020—EXAMINATION OF RECORDS AND ACCOUNTS BY AGENTS OF COMMISSION

§ 1020.1 Examination of records and accounts.

Each and every motor carrier and broker subject to Part II of the Interstate Commerce Act, and receivers, trustees, and representatives having control, direct or indirect, over or affiliated with any such motor carrier or broker, upon the demand of a special agent or an examiner of the Commission, and upon the presentation of proper credentials, shall forthwith permit such special agent or examiner to inspect and examine all such lands, buildings, or equipment of motor carriers and brokers used in connection with interstate or foreign operations, and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by motor carriers and brokers subject to the act, and permit such special agent or examiner to make notes and copies of such papers as he deems wise.

(49 Stat. 546, as amended, 563, as amended; 49 U.S.C. 304, 320)

[32 FR 20015, Dec. 20, 1967]

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

Sec.

1021.1 Standards.
1021.2 Enforcement claims and debtors.
1021.3 Enforcement collection designee.
1021.4 Notice of claim and demand.
1021.5 Agreement and release.
1021.6 Method of claim payment.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

SOURCE: 32 FR 20015, Dec. 20, 1967, unless otherwise noted.

§ 1021.1 Standards.

The regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.) and published in 4 CFR Parts 101 through 105 are hereby adopted by the Interstate Commerce Commission for the administrative collection of enforcement claims.

§ 1021.2 Enforcement claims and debtors.

(a) Enforcement claims are all separate civil penalty or forfeiture claims not exceeding $20,000 which may arise under the provisions of the Interstate Commerce Act or legislation supplementary thereto.

(b) Debtor is any person or corporation subject to civil penalties or forfeitures for violation of the provisions of the Interstate Commerce Act or legislation supplementary thereto.

§ 1021.3 Enforcement collection designee.

The Director, Office of Consumer Protection, Interstate Commerce Commission, is the Commission's designee to take all necessary action administratively to settle by collection, compromise, suspension or termination, enforcement claims within the contemplation of the Federal Claims Collection Act of 1966.

[45 FR 31374, May 13, 1980]

§ 1021.4 Notice of claim and demand.

Initiation of administrative collection of enforcement claims will be commenced by the enforcement collection designee mailing a letter of notice of claim and demand to the debtor. Such letter will state the statutory basis for the claim, a brief resume of the factual basis for the claim, the amount of the claim, and indicate the availability of the designee or his personal agent for discussion of the claim should the debtor so desire.

§ 1021.5 Agreement and release.

Upon the debtor's agreement to settle a claim, an Agreement and Release Form will be provided to the debtor in duplicate. This form, after reciting the statutory basis for the claim, will contain a statement to be signed in duplicate by the debtor evidencing his agreement to settlement of the claim for the amount stated in the agreement. Both copies of the signed agreement shall be returned to

the collection designee. Upon final collection of the claim, one copy of the agreement and release shall be returned to the debtor with the release thereon signed by the enforcement collection designee.

§ 1021.6 Method of claim payment.

(a) Debtors: Debtors shall be required to settle claims by:

(1) Payment by bank cashier check or other instrument acceptable to designee.

(2) Installment payments by check after the execution of a promissory note containing an agreement for judgment.

(b) All checks or other instruments will be made out to "Interstate Commerce Commission," and after receipt will be forwarded to U.S. Treasury.

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.

1022.1 Eligibility.
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AUTHORITY: Sec. 1, 49 Stat. 546, as amended, 550, as amended; 49 U.S.C. 304, 305.

SOURCE: 32 FR 20015, Dec. 20, 1967, unless otherwise noted.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of said State and the United States concerning highway transportation by filing with the Secretary of said Commission at Washington, D.C. 20423, a written acceptance of the terms herein.

§ 1022.2 Extent of acceptance.

The written acceptance may be in letter form, signed by competent authority of said State and shall specify the terms herein pertaining to the obligation of a State in which said State will participate. To the extent that a State agrees to participate in the terms herein, officials of the Interstate Commerce Commission will reciprocate.

§ 1022.3 Cancellation.

Cancellation or withdrawal, in whole or in part, from any agreement made under this chapter may be effected by written notice from either party indicating the effective date of said cancellation or withdrawal.

§ 1022.4 Exchange of information.

States furnishing information to Interstate Commerce Commission. Information that comes to the attention of a duly authorized agent of the State in the course of his official duties of examination, inspection, or investigation of the property, equipment, and records of a motor carrier or others, and that is believed to be in violation of any provision of the economic laws of the United States concerning highway transportation or the regulations of the Interstate Commerce Commission prescribed thereunder, shall be communicated to the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection.

[45 FR 31374, May 13, 1980]

§ 1022.5 Requests for assistance.

(a) *State request for Interstate Commerce Commission assistance.* Upon written request of the appropriate State authority, the Office of Consumer Protection Regional Director of the Interstate Commerce Commission for that State shall, as time, personnel and funds permit, obtain evidence for use by said State in the enforcement of its laws and regulations concerning unauthorized or otherwise illegal motor carrier operations. Evidence obtained in this manner shall be transmitted to the appropriate State authority together with the name and address of an agent or employee, if any, have knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

(b) *Interstate Commerce Commission request for State assistance.* Upon written request from a Regional Direc-

tor of the Interstate Commerce Commission's Office of Consumer Protection, the appropriate State authority shall, as time, personnel, and funds permit, obtain evidence in the State for use by the Interstate Commerce Commission in its enforcement of the economic laws and regulations of the United States concerning highway transportation. Evidence obtained in this manner shall be transmitted to the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection, together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[45 FR 31374, May 13, 1980]

§ 1022.6 Joint examination, investigation or inspections.

Upon agreement by the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection and the appropriate State authority, there will be conducted a joint examination, inspection, or investigation of the property, equipment, or records of motor carriers or others, for the enforcement of the economic laws and regulations of the United States and the State concerning highway transportation. The Regional Director of the Interstate Commerce Commission and the appropriate State authority shall decide as to the location and time, the objectives sought, and the identity of the person who will supervise the joint effort and make the necessary decisions. Any agent or employee of either agency who has personal knowledge of pertinent facts shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[45 FR 31375, May 13, 1980]

§ 1022.7 Joint administrative activities related to enforcement of economic laws and regulations.

To facilitate the interchange of information and evidence, and the conduct of joint investigation and administrative action, the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection and the appropriate State authority shall, when warranted, schedule joint conferences of staff members of both agencies. Information shall be exchanged as to the nature and extent of the authority and capabilities of the respective agencies to enforce the economic laws of the State or of the United States concerning highway transportation. The Interstate Commerce Commission and the State (or appropriate State authority) shall use their best efforts to inform each other of changes in their rules and regulations.

[45 FR 31375, May 13, 1980]

§ 1022.8 Supplemental agreements.

The terms hereinabove specified may be supplemented from time to time by specific agreement between the Interstate Commerce Commission and the appropriate State authority in order to further implement the provisions of section 305(f).

PART 1023—STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES

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APPENDIX OF FORMS

AUTHORITY: Sec. 1, 49 Stat. 543, as amended, 546, as amended; 49 U.S.C. 302, 304.

SOURCE: 32 FR 20016, Dec. 20, 1967, unless otherwise noted.

Subpart A—Definitions

§ 1023.1 Definitions.

The following letters and words, when used in these Standards, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The words "driveaway operation" shall mean an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

(b) The letters "ICC" shall mean the Interstate Commerce Commission;

(c) The word "law" shall include constitutional and statutory provisions and rules and regulations adopted by a Commission;

(d) The words "motor carrier" shall mean a motor carrier of passengers or property holding operating authority issued by the Interstate Commerce Commission;

(e) The letters "NARUC" shall mean the National Association of Regulatory Utility Commissioners;

(f) The word "State" shall mean any of the several States or the District of Columbia, as the case may be;

(g) The words "State commission" or "commission" shall mean the commission, board or official which, under the laws of any State, possesses the jurisdiction to issue or deny certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles in intrastate commerce over the highways of such State; and

(h) The word "vehicle" shall mean a self-propelled or motor-driven vehicle operated by a motor carrier under authority issued by the Interstate Commerce Commission.

§ 1023.2 Operations within borders of State.

Whenever these Standards refer to operations "within the borders" of a State, such operations shall be deemed to include interstate operations to, from, within or traversing such State.

Subpart B—Registration of ICC Operating Authority

§ 1023.11 When registration required.

Whenever a State requires a motor carrier to file and maintain a current record of its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, such motor carrier shall not exercise such authority within the borders of such State unless and until there shall have been filed with and approved by the commission of such State an application for the registration of such authority as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart: *Provided, however,* That a motor carrier shall only be required to file with such State commission that portion of its authority permitting operation within the borders of such State; *And provided further,* That a motor carrier shall not be required to file with such State commission an emergency or temporary operating authority having a duration of 30 consecutive days or less if such carrier has: (a) Registered its other authority and identified its vehicles or driveaway operation under the provisions of these standards; and (b) furnished to the State commission a telegram or other written communication describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of these standards.

§ 1023.12 Form and execution of application.

The application for the registration of such operating authority shall be in the form set forth in Form A appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier.

§ 1023.13 Filing of application.

The application for the registration of such operating authority shall be filed in duplicate with the commission of such State. The original, to which the copy of the ICC operating authority shall be attached, shall be retained by the State commission. The other copy of the application or an acknowledgment shall be transmitted to the motor carrier when the application is approved by the State commission. The application shall be accompanied by the fee, if any, prescribed by the law of such State: *Provided, however,* That such fee shall not exceed $25 for an application filed by a motor carrier who has not previously filed a currently effective application for registration of ICC operating authority with the Commission of such State: *And provided further,* That such fee shall not exceed $10 for an application filed by a motor carrier who has previously filed a currently effective application for the registration of ICC operating authority with such Commission.

[32 FR 20016, Dec. 20, 1967, as amended at 35 FR 2524, Feb. 4, 1970]

§ 1023.14 Prior registration; cancellation.

A motor carrier need not register under the provisions of this subpart any authority issued by the ICC permitting operation within the borders of a State, when the same was properly registered with the commission of such State at the time these standards became effective; *provided, however,* That if a motor carrier fails to register and identify its vehicles and driveaway operations with such State commission pursuant to Subpart D of this part for 3 consecutive years, such commission may cancel the motor carrier's registration of ICC operating authority under this Subpart upon thirty days notice to the carrier at its last known address, and the carrier shall not thereafter exercise its ICC authority within the borders of such State unless and until it shall have again registered such authority as prescribed by the provisions of this Subpart and shall have complied with all other requirements of this part.

[32 FR 20016, Dec. 20, 1967, as amended at 41 FR 5395, Feb. 6, 1976]

Subpart C—Designation of Process Agent

§ 1023.21 When designation required.

Whenever a State requires a motor carrier to file a designation of a local agent for service of process, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective designation of such a local agent.

§ 1023.22 Filing of designation.

The motor carrier shall file such designation of a local agent for service of process with the commission of such State by showing the name and address of such agent on the uniform application for registration of interstate operating authority, as set forth in Form A appended to this part, or by furnishing such commission with a true copy of the designation of such agent filed with the Interstate Commerce Commission.

§ 1023.23 Qualifications of agent.

The provisions of this subpart shall not be construed in any way to affect the qualifications of a local agent for service of process as prescribed by State law.

Subpart D—Registration and Identification of Vehicles and Driveaway Operations

§ 1023.31 When registration and identification required.

Whenever a State requires a motor carrier to register and identify any vehicle (other than one used in driveaway operations) as operating under its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, or whenever a State requires a motor carrier, engaged in driveaway operations, to register and identify such operations as being conducted under its authority issued by the Interstate Commerce Commission permitting the conduct of same within the borders of such State, such motor carrier shall not operate such vehicle or engage in such driveaway operations under such authority within the borders of such State unless and until the vehicle or driveaway operations shall have been registered with the commission of such State in accordance with the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.32 Registration and identification.

(a) On or before the 31st day of January of each calendar year, but not earlier than the preceding 1st day of November, such motor carrier shall apply to the Commission of such State for the issuance of an identification stamp or stamps, or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year. If a State elects to require the use of identification stamps under the provisions of this subpart, the motor carrier may apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

(b) If the State commission determines that the motor carrier has complied with all applicable provisions of these standards, the commission shall issue to the motor carrier the number of identification stamps requested, or shall assign it an identification number, as the case may be.

(c) An identification stamp or number issued or assigned under the provisions of this subpart shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier under authority issued by the Interstate Commerce Commission, and shall not be used for the purpose of distinguishing between

the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp or identification number under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization.

(d) The State commission may require the motor carrier to accompany such application with a list identifying each vehicle (other than one to be used in driveaway operations) which it intends to operate within the borders of such State during the ensuing year. The State commission may further require the motor carrier to keep such list current by filing with it an identification of each vehicle acquired for operation within the borders of such State and each vehicle whose operation is discontinued therein after the filing of such list. The filing of an identification of such newly acquired or discontinued vehicle shall be made with the State commission on or before the 15th day after the motor carrier initiates or discontinues operation of the vehicle within the borders of such State.

(e) On or before the 31st day of January of each calendar year, but not earlier than the preceding 1st day of November, such motor carrier shall apply to the National Association of Regulatory Utility Commissioners, or to the Commission of any State in which it is permitted to operate pursuant to authority issued by the Interstate Commerce Commission, for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year.

(f) The NARUC or the State commission, as the case may be, shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of such State during the ensuing year, the motor carrier shall place one of such identification stamps or such identification number on the back of a cab card in the square bearing the name of such State in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation, and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of 15 months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof, and, in the case of a vehicle leased by the motor carrier, such expiration date shall not exceed the expiration date of the lease.

(g) The registration and identification of a vehicle or driveaway operations under the provisions of this subpart and the identification stamp or number evidencing same and the cab card prepared therefor shall become void on the 1st day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

[32 FR 20016, Dec. 20, 1967, as amended at 36 FR 3417, Feb. 24, 1971; 38 FR 33773, Dec. 7, 1973; 42 FR 6370, Feb. 2, 1977]

§ 1023.33 Form and execution of application for identification stamps or number.

The application for the issuance of such identification stamps or number shall be in the form set forth in Form B appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State; provided, however, that such fee shall not exceed $5 for the issuance of each such identification stamp; and provided further (when the State Commission assigns an identification number in lieu of issuing an

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identification stamp or stamps), that such fee shall not exceed $5 for each vehicle operated under the authority of the motor carrier identified in the cab card bearing such identification number. The prescription of the maximum fee of five dollars for the issuance of such identification stamp or number shall not preclude a State from imposing an additional fee in a reasonable amount to be paid to a State commission prior to the issuance of such stamp or number, if such additional fee shall be subject to exclusive use by the State commission and used by it solely for defraying the cost of the regulation of carriers by highway operating within the borders of such State and the enforcement of laws pertaining thereto. The state commission shall maintain adequate records to identify the receipt and disbursement of such funds collected pursuant to the provisions of this section.

[32 FR 20016, Dec. 20, 1967, as amended at 35 FR 2525, Feb. 4, 1970; 36 FR 3417, Feb. 24, 1971; 38 FR 33773, Dec. 7, 1973]

§ 1023.34 Execution of application for cab card.

The application for the issuance of such cards shall be duly executed by an official of the motor carrier.

[33 FR 19250, Dec. 25, 1968]

§ 1023.35 Form of identification stamp or number.

Any identification stamp issued under the provisions of this subpart by a State commission shall bear its name or symbol and such other distinctive markings or information, if any, as the Commission deems appropriate. In addition, such stamp shall bear an expiration date of the "1st day of February in the succeeding calendar year" as provided in § 1023.32(g). The stamp shall be in the shape of a square and shall not exceed 1 inch in diameter. Any identification number issued by a State commission under the provisions of this subpart shall not exceed the dimensions of a square 1 inch in diameter.

[32 FR 20016, Dec. 20, 1967, as amended at 36 FR 3417, Feb. 24, 1971]

§ 1023.36 Form of cab card.

The cab card referred to above shall be in the form set forth in Form D appended to this part and made a part of this section and shall bear the seal of the NARUC. The cab card shall be printed on a rectangular card 11 inches in height and 8½ inches in width.

[32 FR 20016, Dec. 20, 1967, as amended at 33 FR 19250, Dec. 25, 1968]

§ 1023.37 Use of cab cards in connection with vehicles not used in driveaway operations.

In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified in the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.

§ 1023.38 Use of cab cards in driveaway operations.

In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted under the authority of the carrier identified in the cab card.

§ 1023.39 Inspection of the cab card.

A cab card shall, upon demand, be presented by the driver to any authorized Government personnel for inspection.

§ 1023.40 Destruction of cab cards; transfer.

(a) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to paragraph (b) of this section.

(b) A motor carrier discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: *Provided, however,* That if such carrier provides a newly ac-

quired vehicle in substitution therefor, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle, or any subsequently substituted vehicle, by compliance with the following procedure:

(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

(2) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

(3) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards, and thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.

[36 FR 3417, Feb. 24, 1971, as amended at 38 FR 33773, Dec. 7, 1973; 42 FR 6370, Feb. 2, 1977]

§ 1023.41 Alteration of cab card; replacement.

(a) Any erasure, improper alteration, or unauthorized use of a cab card shall render it void.

(b) If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be prepared and new identification stamps or numbers may be issued therefor upon application by the motor carrier and upon payment of the same fee prescribed for the original issuance thereof, if any.

§ 1023.42 Identification.

No State shall require a motor carrier to display external identification upon a vehicle other than such identification as is required by regulations of the Interstate Commerce Commission. Nothing in these standards shall be construed to affect State requirements as to the external identification of vehicles to indicate the payment of a State tax or fee imposed for revenue purposes or for any other purpose not within the purview of subsection (b) of section 202 of the Interstate Commerce Act 49 U.S.C., section 302(b)(2).

Subpart E—Evidence of Liability Security

§ 1023.51 When liability insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective bodily injury and property damage liability security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.52 Form and execution of liability insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form E appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 1023.53 Form and execution of liability insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a

part of it. The endorsement shall be in the form set forth in Form F appended to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 1023.54 Form and execution of liability surety bond.

The surety bond referred to in § 1023.51 shall be in the form set forth in Form G appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 1023.55 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in anyway to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart F—Evidence of Cargo Security

§ 1023.61 When cargo insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective cargo security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 1023.62 Form and execution of cargo insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form H appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 1023.63 Form and execution of cargo insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a part of it. The endorsement shall be in the form set forth in Form I appended to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 1023.64 Form and execution of cargo surety bond.

The surety bond referred to in § 1023.61 shall be in the form set forth in Form J appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 1023.65 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in any way to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart G—Notice of Security Cancellation

§ 1023.71 Notice of insurance cancellation.

An insurer under the provisions of Subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability insurance or motor carrier cargo insurance, as the case may be, by filing with the commission the form of notice set forth in Form K appended to this part and made a part

of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the insurer.

§ 1023.72 Notice of bond cancellation.

A surety or motor carrier under the provisions of Subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability surety bond or motor carrier cargo surety bond, as the case may be, by filing with the commission the form of notice set forth in Form L appended to this part and made a part of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the surety or motor carrier.

Subpart H—Evidence of Self-insurance

§ 1023.81 Evidence of self-insurance.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective qualifications as a self-insurer under the rules and regulations of the Interstate Commerce Commission, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a true and readily legible copy of the currently effective ICC order authorizing such motor carrier to self-insure under the provisions of the Interstate Commerce Act.

Subpart I—Interim Operations

§ 1023.91 Interim operations.

Whenever a State commission fails to act upon a filing made under Subparts B, C, D, E, and F of these standards within 30 days after receipt of same, the motor carrier for whose benefit such filing was made may begin operation within the borders of such State in such manner as would have been otherwise authorized if the filing had been acted upon favorable by the State commission within such period of 30 days. The motor carrier may continue such operation under the provisions of this section until such time as the State commission acts upon such filing.

Subpart J—Miscellaneous

§ 1023.101 Reproduction of form.

(a) In order to achieve complete uniformity in the reproduction of the Uniform Identification Cab Card, as set forth in Form D appended to this part, the NARUC shall reproduce and supply an adequate quantity of such form for use under the provisions of these Standards. No person or organization, other than the NARUC, shall reproduce such form for use under the provisions of these Standards, and any such form reproduced by such an unauthorized person or organization is hereby declared to be void.

(b) The NARUC, upon request, shall supply such form to the State Commissions and motor carriers. The NARUC shall fix and charge a reasonable fee in connection with the reproduction and supply of such form. Each state Commission supplying such form shall charge the fee fixed therefor by the NARUC.

[33 FR 19250, Dec. 25, 1968]

§ 1023.102 Completion of forms.

A typewriter or indelible ink shall be used in entering information in the blank spaces appearing on the forms prepared under the provisions of these standards.

§ 1023.103 Violations declared unlawful; criminal penalties; civil remedies.

Any violation of the provisions of these standards is hereby declared to be unlawful. Nothing in these standards shall be construed to prevent a State from imposing criminal penalties upon any person or organization violating any provision of these standards or from providing or applying civil remedies or sanctions in connection with such violations.

§ 1023.104 Sta. : taxes and fees.

Nothing in these standards shall be construed to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State.

§ 1023.105 Use of fees.

Each State collecting fees pursuant to these Standards is urged to use such fees, or counterpart funds, for the purpose of defraying the cost of the regulation of carriers by highway operating within the borders of such State and the enforcement of laws pertaining thereto.

[38 FR 33773, Dec. 7, 1973]

§ 1023.106 Reciprocity.

Nothing in these Standards shall be construed to affect the right of a State to enter into reciprocal agreements or arrangements with other States for the purpose of reducing or eliminating the maximum fees prescribed in these Standards.

[38 FR 33773, Dec. 7, 1973]

Appendix of Forms

Form A

UNIFORM APPLICATION FOR REGISTRATION OF OPERATING AUTHORITY ISSUED BY ICC

To: ———— (Name of State commission) Date ————
Applicant ————
Street ————
City ———— State ————
ICC Operating Authority No. MC ————
Type of route. ☐ Certificate ☐ Permit ☐ TA—— ☐ Regular ☐ Irregular
Type of carrier: ☐ Property ☐ Passenger ☐ Common ☐ Contract
Give principal office address, if different than above: Street ———— City ————State————
If individual, give name and address:

————

If corporation, give State in which incorporated: ————
Name of president ———— Name of secretary————
If partnership, give names and addresses of partners:————

————

————

Process agent for State (This part may be omitted if the applicant has previously filed with the State commission, or attaches hereto, a current copy of its designation filed with ICC):

Name ———— Street ————
City ———— State————

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

————
(Signature)

————
(Title)

Instructions: File this application in duplicate with ICC operating authority attached to original. When application is approved, the copy will be returned to the applicant.

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

Form B

UNIFORM APPLICATION FOR REGISTRATION AND IDENTIFICATION OF VEHICLES OR DRIVEAWAY OPERATIONS OPERATED OR CONDUCTED UNDER AUTHORITY ISSUED BY ICC

To: ———— (Name of State commission) Date ————
Applicant ————
Street ————
City ———— State————
ICC Operating Authority Number MC ——

The above described applicant hereby applies for the issuance of ———— (Number) identification stamp(s), or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which the applicant intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the period ending at twelve midnight on January 31, 19——, for which such identification stamp(s) or number is effective. The operation of such vehicle or vehicles, or the conduct of such driveaway operations, shall be pursuant to authority issued to the applicant by the Interstate Commerce Commission.

The applicant shall not knowingly permit any other person or organization to use the identification stamp(s) or number issued or assigned pursuant to this application.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

Signature ———————————

Title ———————————

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant ot the provisions of section 202(b)(2) of the Interstate commerce act (49 U.S.C., sec. 302(b)(2)).

FORM D

UNIFORM IDENTIFICATION CAB CARD OPERATING MOTOR CARRIER

ICC Operating Authority Number MC ——

Name of carrier ———————————

Street ———————————

City ———————————

State ———————————

Vehicle

Type ———————— (Tractor-truck-bus-driveaway) Make* ————————

Year* ———————— Serial No.* ————————

State of vehicle registration** ————————

Name of owner of vehicle* ————————

The above described vehicle or driveaway operation is being operated or conducted under authority granted by the Interstate Commerce Commission to the above described motor carrier. Where required by State law, such vehicle or driveaway operation has been registered with each State whose current identification stamp or number is placed on the reverse side of this card and there has been filed with each such State (to the extent required by such State) the information authorized by section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302 (b)(2)) and the rules and regulations promulgated thereunder.

The above described vehicle or driveaway operation has been identified in conformity with the rules and regulations of the Interstate Commerce Commission.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute this document on behalf of the above carrier. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

Signature ———————————

Title ———————————

Date executed ———————————

This card expires at 12:01 a.m., February 1, 19— or ————, ——19—, whichever is earlier.

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302(b)(2)).

*Not applicable to driveaway operations.

**If the State of vehicle registration changes during the period this cab card is effective, the motor carrier shall immediately indicate the change above by marking out the name of the State listed and inserting the name of the new State of vehicle registration in lieu thereof. This change shall be initialed by an official of the motor carrier.

REVERSE SIDE OF CAB CARD

Alabama	Alaska	Arkansas	Arizona	California	Colorado
Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota
Tennessee	Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming			

FORM E

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with ———————— (Name of commission) (hereinafter called commission)

This is to certify, that the ———————— (Name of company) (hereinafter called Company) of ———————————— (Home office address of company) has issued to ———————— (Name of motor carrier) of ———————— (Address of motor carrier) a policy or policies of insurance effective from ———————— 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier bodily injury and property damage liability insurance endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at ————————————

————————————

(Street address)

————————————

(City) (State) (Zip code)

this ———— day of ———— 19—

————————————

(Authorized company representative)

Insurance company file No. ————————

(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. ———————— issued by ————————, herein called company, of ————————to ———————— of

Dated at ———————— this ——day of ———————— 19

Countersigned by ————————————

(Authorized company representative)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

REVERSE SIDE OF UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

✔—Indicates State Commissions with whom uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

FORM G

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we ———— (Name of motor carrier principal) of ———— (City) ————, (State) as principal (hereafter called principal), and ———— (Name of surety), a corporation created and existing under the laws of the State of ————, with principal office at ———— (City) ————, (State) as Surety (hereinafter called surety), are held and firmly bound unto the State of ———— in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of ————

————

(Name of commission)

(hereinafter called commission), relating to insurance or other security for the protection of the public, and has elected to file with the commission a surety bond conditioned as hereinafter set forth; and

Whereas, this bond is written to assure compliance by the principal as a motor carrier of passengers or property with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the principal for any of the damages herein described.

Now, therefore, if every final judgment recovered against the principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation (but excluding injury to or death of the principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal and property transported by the principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

This bond is effective from ———— (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The princi-

pal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission. The surety shall not be liable hereunder for the payment of any judgment or judgments against the principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

In witness whereof, the said principal and surety have executed this instrument on the ——— day of ————————, 19———

————————
(Principal)

By ————————————

[AFFIX CORPORATE SEAL]

————————
(Surety)

————————
(City) (State)

By ————————————

Countersigned at ——— this ——— day of ———— 19—

Bond No. ————————————

(Registered resident agent)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302(b)(2)).

FORM H

UNIFORM MOTOR CARRIER CARGO CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with ———————— (Name of commission) (hereinafter called commission)

This is to certify, that the ———— (Name of company) (hereinafter called company) of ———————— (Home office address of company) has issued to ———————— (Name of motor carrier) of ———————— (Address of motor carrier) a policy or policies of insurance effective from ———— 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier cargo insurance endorsement, has or have been amended to provide cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at ————————————
(Street address)

————————————
(City) (State) (ZIP Code)

this——— day of ———————— 19 ——

————————————
(Authorized company representative)

Insurance company file No. ————————
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM I

UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy as proof of responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for motor carrier cargo liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by

reason of the obligation assumed in making such certification.

2. The uniform motor carrier cargo certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. ———— issued by ————, herein called company, of ———— to ———— of ————

Dated at ———— this —— day of ———— 19—

Countersigned by ————

————————————

(Authorized company representative)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

REVERSE SIDE OF UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT

✔—Indicates State Commissions with whom uniform motor carrier cargo certificate of insurance has been filed

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

FORM J

UNIFORM MOTOR CARRIER CARGO SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we,

————————————

(Name of motor carrier principal)

of ———— (City),———— (State) as principal (hereinafter called principal), and ————(Name of surety), a corporation created and existing under the laws of the State of ————, with principal office at ———— (City), ———— (State), as surety (hereinafter called surety), are held and firmly bound unto the State of ————in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of the ———— (Name of commission) (hereinafter called commission), relating to insurance or other security for the protection of shippers and consignees, and has elected to file with the Commission a bond conditioned as hereinafter set forth, and

Whereas, this bond is written to assure compliance by the principal as a motor carrier with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of shippers and consignees, and shall inure to the benefit of any and all shippers or consignees to whom the princi-

pal may be held liable for any of the damages herein described.

Now, therefore, if the principal shall make compensation to shippers and consignees for all losses of or damages to property belonging to them which shall, while this bond is in effect, come into the possession of the principal in connection with its transportation service, regardless of whether such losses or damages occur while said property is in a motor vehicle, terminal, warehouse or other place, for which losses or damages the principal may be held legally liable, then this obligation shall be void, otherwise it shall remain in full force and effect.

The liability of the surety for the limits hereinafter provided shall be a continuing one notwithstanding any recovery hereunder, and extends to such losses or damages regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation service of the principal are specifically described herein or not, and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

The liability of the surety for any such loss or damage shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

This bond is effective from ———— (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission.

The surety shall not be liable hereunder for the payment of any of the losses or damages hereinbefore described which arise on property coming into the possession of the principal in connection with its transportation service after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such losses or damages arising on property coming into the possession of the principal in connection with its transportation service prior to the date such termination becomes effective.

In witness whereof, the said principal and surety have executed this instrument on the —— day of ————, 19——.

————————
(Principal)

By ————————————

————————
(Surety)

[AFFIX CORPORATE SEAL]

————————
(City) (State)

By ————————————

Countersigned at ———— this —— day of ———— 19—

Bond No. ————————

(Registered resident agent)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM K

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(Executed in triplicate)

Check type canceled: BI and PD☐Cargo☐

Filed with ———— (Name of commission) (hereinafter called commission)

This is to advise that under the terms of a policy or policies issued to ————

————————————
(Name of motor carrier)

of ————————————
(Address of motor carrier)

by ————————————
(Name of company)

of ————————————
(Address)

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the ———— day of ————, 19——, 12:01 a.m., standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

————————
(Signature of insurer)

Insurance Company File No. ————

(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM L

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER SURETY BONDS

(Executed in triplicate)

Check type canceled: BI and PD ☐Cargo ☐
Filed with ———— (Name of commission) (hereinafter called commission)
This is to advise that, under the terms of surety bond(s) executed in behalf of

———————————————
(Name of principal)
of ———————————————
(Address)
by ———————————————
(Name of surety)
of ———————————————
(Address)

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the ———— day of ————, 19——, 12:01 a.m., standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

———————————————
(Signature of principal or surety)
Insurance company File No. ————
(Policy No.)

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

[32 FR 20016, Dec. 20, 1967, as amended at 33 FR 19250, Dec. 25, 1968; 42 FR 6370, Feb. 2, 1977]

PARTS 1030–1039—CARRIERS SUBJECT TO PART I, INTERSTATE COMMERCE ACT

PART 1030—FILING OF CONTRACTS BY COMMON CARRIERS

§ 1030.1 Filing of contracts, agreements, or arrangements with other common carriers.

(a) Common carriers subject to Part I of the Interstate Commerce Act are hereby relieved from the provisions of section 6 (5) of said act requiring the filing with the Commission of copies of all contracts, agreements, and arrangements with other common carriers, except that common carriers subject to Part I of said act shall file with the Commission copies of all such contracts, agreements, and arrangements as shall have been or may hereafter be required to be filed by order, rule or regulation of the Commission, including any requirement contained in any annual or other report form.

(b) The Commission reserves the right to modify this regulation upon appropriate notice, at any time in the future, by enlarging or reducing the specifications contained herein, and this regulation is subject to the further condition that the carrier promptly furnish upon request of the Commission, or any bureau thereof, a copy of any contract, agreement, or arrangement as may be requested by such bureau or Commission.

(Sec. 12, 24 Stat. 383, as amended, sec. 5, 63 Stat. 486; 49 U.S.C. 12, 6)

[32 FR 20023, Dec. 20, 1967]

PART 1031—DIVISIONS OF JOINT RATES APPLICABLE TO RAILWAY FUEL

§ 1031.1 Filing of Statements of divisions of joint rates applicable to railway fuel coal and railway fuel other than coal.

Carriers subject to Part I of the Interstate Commerce Act shall furnish upon request therefor by the Interstate Commerce Commission or any Bureau thereof, copies of division sheets or statements of divisions, including amendments thereto or changes therein, which in any wise affect or determine the division of joint rates applicable upon shipments of railway fuel coal and railway fuel other than coal, to which said carriers are a party.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12)

[32 FR 20024, Dec. 20, 1967]

PART 1031A—PROCEDURES FOR REQUESTING SURCHARGE COSTS AND REVENUES FROM RAIL CARRIERS APPLYING A COMMODITY ORIENTED SURCHARGE OR CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. SECTION 10705a

Sec.
1031A.1 Scope.
1031A.2 Procedures.

AUTHORITY: 49 U.S.C. 10321, 10705a, 5 U.S.C. 553.

SOURCE: 46 FR 19241, Mar. 30, 1981, unless otherwise noted.

§ 1031A.1 Scope.

The provisions of this part apply only to rail carriers subject to the jurisdiction of the Commission under subchapter 1 of Chapter 105 of Title 49.

§ 1031A.2 Procedures.

(a) The surcharging or cancelling rail carrier is required to provide a shipper or port with its division of revenue within three working days of receipt of a request.

(b) If the request is not timely honored, the tariff will be suspended and investigated by the Commission, and ultimately disapproved.

(c) The Commission will furnish within five working days of a request, determinations of the variable cost of service and revenue of a rail carrier applying a surcharge or cancelling the application of a joint rate. A request must be route-specific and must include, for each surcharged rate or route to be cancelled:

(1) The amount of the surcharge.

(2) The tariff minimum weight.

(3) The tariff rate applicable at the minimum weight, tariff reference, and applicable unit (e.g., per hundred weight).

(4) The relevant territorial division and the relevant intraterritorial subdivision (where applicable) as percentages. Surcharging carriers must supply this information within three working days of request.

(5) The car type or types in which the traffic normally moves (see Appendix C).

(6) The commodity description—STCC code.

(7) The class of traffic.

(8) The number of intertrain and intratrain switches (if known).

(9) The origin, destination, interchanges, carriers used, and the short line distance of the surcharging or cancelling carrier's line (from the published distance tables) from or to the interchange point(s) at which the traffic is tendered.

(d) Along with any request for variable cost and revenue information, shippers and ports must certify to the Commission that they have no feasible transportation alternatives to the surcharged or cancelled routes.

APPENDIX A—EX PARTE NO. 389 DATA FORMAT SHEET

1. Requesting party ———————
2. Commodity description—STCC Code ——
3. Surcharging or cancelling railroad ——
4. Car type in which traffic normally moves ———————
———————
5. Car owner ———————
   If private car, rental per mile ($) ——
6. Tariff minimum in tons ———————
7. Tariff rate at minimum ($) ———————
   Applicable unit ———————
8. Territorial division (%) ———————
   Intraterritorial subdivision (%) ——
9. Amount of surcharge ($) ———————
10. Short line distance on surcharging or cancelling carrier's line ———————
11. Number of intertrain and intratrain switches ———————
12. Origin ———————
13. Destination ———————
14. Class of traffic (Originated, terminated or bridged)———————
15. Number of interchanges ———————
16. Carriers involved in movement ———

APPENDIX B

RAILROAD INITIALS

ATSF—Atchison, Topeka and Santa Fe Railway Co., the
BO—Baltimore and Ohio Railroad Co.
BLE—Bessemer & Lake Erie Railroad Co.
BM—Boston and Maine Corp.
BN—Burlington Northern, Inc.
CO—Chesapeake and Ohio Railway Co.
CNW—Chicago and North Western Railway System
MILW—Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
CRR—Clinchfield Railroad Co.
CS—Colorado and Southern Railway Co., the

CR—Consolidated Rail Corp.
DH—Delaware and Hudson Railway Co.
DRGW—Denver and Rio Grande Western Railroad Co., the
DTI—Detroit, Toledo and Ironton Railroad Co.
DMIR—Duluth, Missabe and Iron Range Railway Co.
EJE—Elgin, Joliet and Eastern Railway Co.
FEC—Florida East Coast Railway Co.
FWD—Fort Worth and Denver Railway Co.
GTW—Grand Trunk Western Railroad Co.
ICG—Illinois Central Gulf Railroad Co., the
KCS—Kansas City Southern Railway Co.
LN—Louisville and Nashville Railroad Co.
LI—Long Island Railroad Co., the
MKT—Missouri-Kansas-Texas Railroad Co.
MP—Missouri Pacific Railroad Co.
NW—Norfolk and Western Railway Co.
PLE—Pittsburgh and Lake Erie Railroad Co., the
SLSF—St. Louis-San Francisco Railway Co.
SSW—St. Louis Southwestern Railway Co.
SCL—Seaboard Coast Line Railroad Co.
SOO—Soo Line Railroad Co.
SP—Southern Pacific Transportation Co.
SOU—Southern Railway System
UP—Union Pacific Railroad Co.
WM—Western Maryland Railway Co.
WP—Western Pacific Railroad Co., the

Instructions for Computer Input Sheet for Ex Parte No. 389 Requesting Parties

Item No. and Description

1—Name of requesting party
3—Commodity description
4—Surcharging or cancelling carrier identification (as shown in Appendix B, Page 3)
8—Car type (as shown in Appendix C)
9—Railroad or privately owned (as shown in Appendix C)
10—Use only for privately owned cars
15—Number items sequentially
16—Minimum weight
17—Total revenue = Minimum weight × tariff rate
18—Division = total revenue × division percentage
19—Surcharge amount
20—Shortline miles on surcharging or cancelling carrier
21—Intertrain and intratrain switches
22—Origin of shipment (whether or not on surcharging or cancelling carrier)
23—Destination of shipment (whether or not on surcharging or cancelling carrier)
24—2 = Interline—use if traffic is originated *or* terminated by surcharging or cancelling carrier. 3 = bridge—use if traffic is neither originated *nor* terminated by surcharging or cancelling carrier

Appendix C.—Car Type Abbreviations

Box—general service unequipped	BXGU.
Box—general service equipped	BXGE.
Box special service	BXSS.
Gondola—general service	GNGS.
Gondola—special service	GNSS.
Hopper open—general service	OHGS.
Hopper open—special service	OHSS.
Hopper covered	COVH.
Stock	STCK.
Flat—general service	FLGS.
Flat—TOFC	TOFC.
Refrigerator—meat mechanical	RFMM.
Refrigerator—other mechanical	RFOM.
Refrigerator—meat non-mechanical	RMNM.
Refrigerator—other non-mechanical	RONM.
Tank 9,999 gallons and under	TK-1.
Tank 10,000-18,999 gallons	TK-2.
Tank 19,000-21,999 gallons	TK-3.
Tank 22,000-27,999 gallons	TK-4.
Tank 28,000-31,999 gallons	TK-5.
Tank 32,000 gallons and over	TK-6.

Car Ownership Abbreviations

RR = Railroad Owned
PL = Privately Owned

Note: PL must be shown for any car for which the owner is paying a rental rate per car-mile only, or for any privately owned car for which no rental is paid.

PART 1032—CONTRACTS FOR PROTECTIVE SERVICE

Sec.
1032.1 Filing of contracts.
1032.2 Content of contracts.

§ 1032.1 Filing of contracts.

(a) Any protective service against heat or cold to property transported or to be transported in interstate or foreign commerce, furnished to or on behalf of any common carrier by railroad or express company subject to Part I of the Interstate Commerce Act, shall be covered by a written contract.

(b) All such railroads and express companies shall file with the Commission, on or before December 1, 1940, five copies (one of which shall be verified) of all currently operative contracts, agreements, or arrangements covering such protective service, and shall inform the Commission in writing, on or before August 1, 1941, which of such contracts or other writings are intended to remain in effect on and after October 1, 1941. Such railroads

and express companies shall also file with the Commission, not later than August 1, 1941, five copies (one of which shall be verified) of any and all amendments to the contracts, agreements, or arrangements so filed.

(c) All such railroads and express companies shall file with the Commission five copies (one of which shall be verified) of all new contracts, agreements, or arrangements covering such protective service, and of any and all amendments to contracts, agreements, or arrangements filed pursuant to paragraph (b) of this section.

(Secs. 1, 12, 24 Stat. 379, 383; 49 U.S.C. 1, 12)
[32 FR 20024, Dec. 20, 1967]

§ 1032.2 Content of contracts.

(a) All rail carriers and express companies receiving protective services under any contracts, agreements, or arrangements requiring approval under section 1(14)(b) of the Interstate Commerce Act shall submit for approval, on or before 120 days after the effective date of this section, new or superseding contracts covering protective services performed under contracts now on file with the Commission as well as those performed under the provisions of Division Sheet 7, "Basis of Divisions Applying in Connection with Charges for Protective Services As Published in Perishable Protective Tariff 16 or Successive Issues Thereof", and supplements thereto. The contracts required herein to be filed shall supersede all prior contracts, including Division Sheet 7, and such contracts and those filed thereafter shall conform in substance to the provisions set forth in paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(b) The charge for each protective service shall yield to the person performing such service no less than the cost of performing the service, the cost to be determined as set forth in paragraph (d)(1) and (2) of this section.

(c) The charge for a protective service may include, in addition to cost, a reasonable profit not in excess of 6 percent of the book cost of the property and equipment employed in furnishing the service, less accrued depreciation, plus an allowance for working capital.

(d)(1) The cost shall be based upon the best information available, which shall include expected future increases or decreases in labor, materials, and other expenses, and may be based upon prior operations to the extent that conditions, expenses, and practices are expected to remain the same.

(2) The cost may be that incurred by the person rendering a specific protective service for a specific railroad or express company, or it may be the average cost of rendering a specific service for all railroads and express companies by such person.

(e) In the event the person rendering the protective services shall not recover costs for any item or service rendered, such person shall bill the railroads and express companies receiving those services, on a proportionate basis, for the amount of the loss. In the event the profit for any item or service received by such person exceeds a reasonable amount, the person rendering the service shall refund the excessive amount, on a proportionate basis, to the railroads and express companies involved. These adjustments are to be made as soon as practicable after the end of each calendar year. In determining the need for adjustments, each item or service for which a unit price has been charged shall be independently considered.

(f) No contract shall provide for a charge to a nonproprietary railroad or express company different from that to a proprietary railroad for the same service under substantially similar conditions.

(g) Contracts may be between one or more persons rendering protective services, on the one hand, and, on the other, one or more railroads and express companies, provided the contracts are consistent with the provisions of paragraphs (b), (c), (d), (e), and (f) of this section.

(54 Stat. 901; 49 U.S.C. 1)
[32 FR 20024, Dec. 20, 1967]

PART 1033—CAR SERVICE

Sec.
1033.0 General.
1033.15 Requests for cars [Rule 15].

NOTE: For service orders issued under this part but not carried in the Code of Federal Regulations, see List of CFR Sections Affected.

§ 1033.0 General.

(a) The car service rules prescribed by §§ 1033.1–1033.18 shall be observed by all Class I railroads (as defined in § 1240.1 of this chapter) and by those Class II railroads, and terminal and switching companies subject to the report and order of the Commission in Docket Ex Parte No. 241, Investigation of Adequacy of Freight Car Ownership, 335 ICC 264, decided August 21, 1969.

(b) The following definitions shall apply:

(1) *Foreign car.* A car on a road to which it does not belong.

(2) *Home road.* The road which owns a car.

(Secs. 1, 12, 15, 17, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17)

[34 FR 14172, Sept. 9, 1969]

§ 1033.15 Requests for cars [Rule 15].

(a) Carriers shall record all requests for cars for loading, which shall include the following information if available:

(1) Date and time.
(2) Name of party.
(3) Name of person receiving request.
(4) Kind of and size of cars wanted.
(5) Number of cars wanted.
(6) Date wanted (see Note 1 below).
(7) Commodity to be loaded.
(8) Destination and route.

NOTE: If order covers more than one date it must state number of cars wanted separately for each day.

(b) Request for cars shall be accepted only by the road on which the car is to be loaded.

(c) On cars originating in switching service, the road performing the switching service shall, if cars of suitable ownership under these rules are immediately available, furnish cars for loading for road-haul via another carrier. If such cars are not immediately available, the switching carriers shall immediately order suitable cars for the designated road-haul carrier in the manner required by paragraph (a) of this section. Cars ordered by switching carriers from road-haul carriers for return loading in road-haul service will be furnished by road-haul carriers in the same manner and to the same extent as cars ordered by industries directly served by it.

(d) Switching carriers are obligated to furnish or arrange for cars required for loading to destinations within the same switching limits.

(Secs. 1, 12, 15, 17, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, 17)

[34 FR 14172, Sept. 9, 1969]

PART 1034—ROUTING OF TRAFFIC

NOTE: For service orders issued under this Part but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected.

§ 1034.1 Temporary authority.

(a) *Authority.* Any railroad subject to regulation under 49 U.S.C. 10501 may reasonably divert or reroute traffic to other carriers, if it is unable due to circumstances beyond its control promptly to transport traffic over a portion of its lines. Traffic necessarily diverted under this authority shall be rerouted to preserve as much as possible the participation and revenues of other carriers provided in the original routing. This authority may be exercised for no more than 30 days following the day on which the rerouting begins. If a carrier needs more than 30 days before its disability or the disability of a receiving carrier is cured, it may automatically extend its rerouting for additional 30-day periods. To extend the period, it must submit a written or telegraphic notice to the Association of American Railroads and the Commission's Railroad Service Board explaining why the rerouting is necessary, when it began, when the disability occurred, why an extension is necessary, the specific lines disabled, the rerouting to be continued, which shippers are affected, and any other important facts.

(b) *Concurrence by carriers.* A railroad rerouting traffic must receive the concurrence of other railroads to which the traffic will be diverted or rerouted, before the rerouting or di-

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version begins. A rerouting carrier must also confirm the inability of a disabled receiving carrier to handle the traffic before rerouting that traffic. If the receiving carrier is no longer disabled, it must accept the traffic according to the routing originally designated.

(c) *Notice by rerouting carrier.* A rerouting carrier must notify the Commission's Railroad Service Board, the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to car service and car hire agreements, and the American Short Line Railroad Association before the rerouting or diversion begins. The originating carrier must notify each shipper at the time each shipment is rerouted or diverted and furnish to each shipper the rerouting, *except when the disability requiring the rerouting occurs after the movement has begun.* When a rerouting carrier submits to the Commission a notice and explanation for an extension of the rerouting period, it must immediately also submit a copy of that notice and explanation to the AAR, the ASLRA and all shippers that have been affected or that the carrier believes will be affected or that request a copy.

(d) *Notice by AAR.* The AAR shall notify all carriers affected by rerouting or by an extension of a rerouting period, in a manner similar to that used for embargoes.

(e) *Applicable rates.* The rates applicable on shipments rerouted or diverted will be the rates applicable over the route originally designated at the time the shipments are tendered.

(f) *Divisions.* The carriers involved in the rerouting or diversion shall proceed even though no contracts, agreements, or arrangements exist between them at the time concerning the divisions of the rates applicable to the traffic. Divisions shall be, during the time the rerouting is in effect, those voluntarily agreed upon by the carriers.

(49 U.S.C. 10321, 11124, 5 U.S.C. 553)

[46 FR 21782, Apr. 14, 1981; 46 FR 26064, May 11, 1981]

PART 1035—BILLS OF LADING

Sec.

1035.1 Requirement for certain forms of bills of lading.
1035.2 Appendix D; form of domestic (straight) bill of lading prescribed.
1035.3 Appendix F; form of contract to be used for shipments of livestock and wild animals in lieu of uniform bill of lading prescribed.
1035.4 Uniform standard bill of lading and uniform order bill of lading.

AUTHORITY: Secs. 1, 12, 24 Stat. 379, as amended; 49 U.S.C. 1, 12.

SOURCE: 32 FR 20024, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCES: For interstate transportation of livestock, see 9 CFR Parts 71-77, 81 For lading and unlading of vessels, see 19 CFR Part 4.

§ 1035.1 Requirement for certain forms of bills of lading.

All common carriers, except express companies, engaged in the transportation of property by rail or by water subject to the Interstate Commerce Act served with notice of this proceeding and parties thereto, are hereby notified and required to cease and desist on or before August 8, 1919 from using their present bills of lading to the extent that the provisions and regulations contained therein are inconsistent with or different from the provisions and regulations contained in the forms of bills of lading designated as Appendixes B and D.

All common carriers subject to the act heretofore served with notice of this proceeding are hereby notified and required to adopt and put in use on or before August 8, 1919 upon notice to the Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act (49 U.S.C. 6), and thereafter to use and employ, uniformly when they issue bills of lading covering shipments, other than livestock, moving in interstate commerce, as required by and defined in section 20 of the act (49 U. S. C. 20), and such forms of bills of lading referred to as Appendixes B and D.

NOTE: Derived from 52 I. C. C. 671, 64 I. C. C. 347, 357; 66 I. C. C. 63; 63 I. C. C. 637; 80

I. C. C. 305; 156 I. C. C. 188; 167 I. C. C. 214; 172 I. C. C. 362; 235 I. C. C. 63; 245 I. C. C. 527.

§ 1035.2 Appendix D; form of domestic (straight) bill of lading prescribed.

(See 49 CFR, 1938 ed., 31.2)

NOTE: Section 2(b) of the bill-of-lading contract terms and conditions is corrected to indicate a nine-month period within which to file claims with carriers on domestic as well as export traffic as a condition precedent to the recovery for loss, damage, injury, or delay to property while in the possession of carriers in accordance with the Act of April 23, 1930, 46 Stat. 251.

Section 9(d) of the bill-of-lading contract terms and conditions is corrected to indicate that the York-Antwerp Rules of 1924 governing the general average liability for loss of or damage to export traffic as approved in 156 I.C.C. 188 (1929) are substituted for the York-Antwerp Rules of 1890.

NOTE: Derived from 52 I.C.C. 671 (Appendix B); 64 I.C.C. 357, Appendix D; 66 I.C.C. 63, 167 I.C.C. 214; 172 I.C.C. 362; 245 I.C.C. 527, 6 FR 2912.

§ 1035.3 Appendix F; form of contract to be used for shipments of livestock and wild animals in lieu of uniform bill of lading prescribed.

(See 49 CFR, 1938 ed., 31.3)

NOTE: Derived from 64 I. C. C. 357; 66 I. C. C. 63; 245 I. C. C. 527, 6 FR 2912.

§ 1035.4 Uniform standard bill of lading and uniform order bill of lading.

Publication of the uniform standard bill of lading and uniform order bill of lading in the form presented on June 16, 1943, by the Association of American Railroads is authorized, subject to the conditions (a) that the wording on the face and back of the forms will conform to that now printed in the Consolidated Classification, the only changes being in the arrangement and spacing of the printed matter on the face of the forms, and (b) that the rail carriers shall allow shippers to use up their present supply of bills of lading before requiring such bills to conform to the rearrangement herein authorized.

PART 1036—INCENTIVE PER DIEM CHARGES ON BOXCARS AND GONDOLAS

Sec.
1036.3 Earmarking.
1036.4 Use of funds on boxcars.
1036.5 Use of funds generated on gondola cars.

AUTHORITY: Secs. 1 and 12 of the Interstate Commerce Act, 24 Stat. 379, 383, as amended; 49 U.S.C. 1, 12.

§ 1036.3 Earmarking.

Each common carrier by railroad shall segregate in Account 716, Capital and Other Reserve Funds, and shall transfer from Account 798, Retained Income, Unappropriated to Account 797, Retained Income, Appropriated, an amount equal to the net credit balance resulting from any incentive per diem settlement involving boxcars and gondola cars subject to this part. The carrier shall maintain separate bank accounts for the segregated funds generated on boxcars and gondola cars, respectively. Canadian carriers shall transfer a net balance after taxes to a U.S. designee, which may be either a U.S. class I railroad or a U.S. corporation established solely to purchase, hold title to, and control general service, unequipped boxcars and unequipped gondola cars subject to the Department of Transportation's safety regulations and the Interstate Commerce Commission's rules pertaining to per diem and car service, and to any reporting requirements determined to be applicable by the Commission's Bureau of Accounts. If the designee of Canadian carriers is a U.S. railroad, it shall maintain separate accounts for funds received on Canadian-owned boxcars and gondola cars, respectively. All boxcars or gondola cars purchased or built by such designee or such other corporation with incentive per diem funds earned on Canadian boxcars or gondola cars must be built in the United States. Any U.S. taxes incurred after transfer of a net balance to such designee may be deducted from the transferred amount for the purpose of determining a final net balance for investment. The earmarked funds shall be reduced by the amount of the additional income tax paid as the result of

increasing taxable income by inclusion of net incentive per diem earnings. The funds in such accounts shall be used as set forth in § 1036.4 and § 1036.5. Unexpended funds remaining in the accounts of the carriers may be invested in Government bonds or other interest-bearing, temporary securities. The interest earned thereafter shall become part of the earmarked funds.

[42 FR 23511, May 9, 1977]

§ 1036.4 Use of funds on boxcars.

(a) The net credit balances resulting from incentive per diem settlements on boxcars, which are earmarked in accordance with § 1036.3, may be drawn down in whole or in part at any time by the carrier to build, lease equivalent of purchase, or purchase, in whole or in part, new or rebuilt unequipped boxcars for general service (boxcars), XF cars, or gondola cars described in § 1036.1: *Provided,* The carrier has in the same calendar year built, leased, or purchased its 1964–68 average acquisitions of boxcars and made up any arrearage in having failed to maintain such average each year this order is in effect. Earmarked funds may also be used in whole or in part to lease any number of new or rebuilt boxcars, XF cars or gondolas described in § 1036.1 in which the carrier is not acquiring an equity interest: *Provided,* The carrier has in the same calendar year leased its 1964–68 average number of boxcars and made up any arrearage in having failed to maintain such an average each year the order is in effect. Earmarked funds may be used in whole or in part to rebuild any number or portion of boxcars, XF cars or gondolas described in § 1036.1: *Provided,* The carrier has in the same calendar year rebuilt its 1964–68 average number of such boxcars and made up any arrearage in having failed to maintain such average each year the order is in effect. Incentive funds may also be used for major repairs that equal at least 25% of the cost of a new car of the same kind and class at that time if this expenditure results in placing a bad order car on line. Incentive funds cannot be used for ordinary repair and maintenance.

(b) As an alternative, the net credit balances resulting from incentive per diem settlements on boxcars, which are earmarked in accordance with § 1036.3, may be drawn down in whole or in part at any time by the carrier to build, lease equivalent of purchase, purchase, or lease in which a carrier is not acquiring an equity interest, in whole or in part, new or rebuilt boxcars, XF cars or gondolas described in § 1036.1, or rebuild any number or portion of those cars: *Provided,* The carrier has in the same calendar year built, leased, purchased, nonequity leased, or rebuilt its 1964–68 average number of boxcars and made up any arrearage in having failed to maintain such average each year this order is in effect. A carrier may, as another alternative, draw down earmarked funds in whole or in part, to build, lease, purchase, or nonequity lease new or rebuilt boxcars, XF cars, or gondolas or rebuild those cars provided, as a minimum, it matches the earmarked funds it will use to obtain those cars with an equal amount of its own funds. To facilitate the change to the aggregate test period from the previous three separate test periods, the effective date of the aggregate test period is August 8, 1977 and on that date all previous test period arrearages will be eliminated for the aggregate test period.

(c) Nonequity leases for unequipped boxcars for general service and XF boxcars must be at least 10 years in duration and, in connection with such leases, earmarked funds must not be used for the cost of maintenance nor on leases entered into prior to January 1, 1975. In a lessee's default in a nonequity lease, the second lease shall be considered an assumption of the initial lease for IPD purposes and the IPD in the second non-equity lease shall be considered new, if the term of the second lease equals the remainder of the defaulted lease.

(d) Net balances on Canadian-owned cars may be drawn down without regard to prior acquisitions, but where the designee is a class I United States carrier such drawdowns shall not affect that carrier's accumulation of arrearages.

(e) XF cars—the net credit balances resulting from incentive per diem set-

tlements on XF cars, which are earmarked in accordance with § 1036.3, may be drawn down in whole or in part at any time by the carrier to build, lease equivalent of purchase, nonequity lease, purchase in whole or in part, or rebuild XF cars, unequipped boxcars, or gondolas. The carrier, as a minimum, must match the earmarked funds with an equal amount of its own funds. Incentive funds may also be used for major repairs that equal at least 25% of the cost of a new car of the same kind and class at that time if this expenditure results in placing a bad order car on line. Incentive funds may not be used for ordinary repair and maintenance.

(f) All earmarked funds that have accrued since the inception of the incentive per diem program must be put to use within 18 months after the end of the calendar year in which the funds are collected and result in a net credit balance for the building, rebuilding, leasing, purchasing, or nonequity leasing of general service, unequipped boxcars described in § 1036.1 for addition to such carrier's or designee's fleet in accordance with this part. Upon a showing of good cause an application, including a showing that the parties to the proceeding herein have been notified by the carrier of such application, may be made to the Commission for waiver of the said 18-month period, which may, in the Commission's discretion, be granted after consideration of all views regarding the application. If the earmarked funds are not used within the 18-month period, they may be voluntarily surrendered to Rail Box whose establishment and operation was approved in *American Rail Box Car Co.—Pooling*, 347 I.C.C. 862. If the carrier fails within the stated period to put to use collected earmarked funds which result in a net credit balance, has not obtained relief from that requirement, and has not surrendered such funds to Rail Box, the Commission will investigate the matter to determine what, if any, corrective action is warranted. Appropriate corrective action would include section 16(12) remedies among others.

(g) Carriers may make temporary investment in unexpended funds in Government bonds or other liquid securities. Such securities must be readily convertible to cash so that funds remain available for boxcar purchases. Interest earned must become part of the earmarked fund.

(h) As used in this section, "build," "rebuild," "lease," or "purchase" refer to a commitment to build, rebuild, lease, or purchase which results in the acquisition of a car on line ready for use within 10 months from the date of commitment, except that in extraordinary cases beyond the control of the carrier or the car supplier, a car that is delivered after 10 months from the date of commitment may qualify if approved by the Bureau of Accounts of this Commission.

(i) Upon application to the Commission, common carriers by railroad who have either adequate car supplies or good cause for not purchasing additional incentive per diem cars described in § 1036.1 from funds earned on those cars, may apply to the Commission to permit expenditure of such funds, on a matching basis, for projects that can be shown to improve directly the utilization of any of the car types earning incentive per diem.

[45 FR 59170, Sept. 8, 1980]

§ 1036.5 Use of funds generated on gondola cars.

The net credit balances resulting from incentive per diem settlements generated on general service unequipped gondola cars described in § 1036.1, which are earmarked in accordance with § 1036.3, may be drawn down in whole or in part at any time by the carrier, or designee of a Canadian railroad, to build, lease equivalent to purchase, lease (nonequity), purchase in whole or in part, or rebuild unequipped gondolas, unequipped boxcars and XF cars as described in § 1036.1. The nonequity leases must be entered into after January 1, 1977, be at least 10 years in duration, and in connection with such leases, earmarked funds must not be used for the cost of maintenance. Upon application to the Commission, common carriers by railroad which have either adequate car supplies or good cause for not purchasing additional incentive

per diem cars described in § 1036.1 from funds earned on those cars, may apply to the Commission to permit expenditure of such funds on a matching basis, for projects that can be shown to directly improve the utilization of any of the car types earning incentive per diem. Earmarked funds must be put to use within 30 months after the end of the calendar year in which the funds are collected. Failure to spend 85 percent of the incentive per diem funds within the 30-month time period by a carrier will result in that carrier not being allowed to earn incentive per diem charges on its unequipped gondola cars until such earmarked funds have been expended. Incentive funds may also be used for major repairs that equal at least 25% of the cost of a new car of the same kind and class at that time if this expenditure results in placing a bad order car on line. Incentive funds cannot be used for ordinary repair and maintenance.

[45 FR 59171, Sept. 8, 1980]

PART 1037—RULES FOR THE HANDLING OF BULK GRAIN AND GRAIN PRODUCTS IN INTERSTATE COMMERCE, AND THE FILING, INVESTIGATION, AND DISPOSITION OF CLAIMS FOR LOSS AND DAMAGE INCIDENT THERETO, WHICH SUPERSEDE THE RULES PRESCRIBED IN EX PARTE NO. 263, LOSS AND DAMAGE CLAIMS, 340 I.C.C. 515 (37 FR 20943)

Sec.

1037.1 Weights and weighing.
1037.2 Cars.
1037.3 Claims.

AUTHORITY: 49 U.S.C. 12 and 15.

SOURCE: 40 FR 49342, Oct. 22, 1975, unless otherwise noted.

§ 1037.1 Weights and weighing.

(a) How determined—Accuracy of the weights used in determining the quantity of grain and grain products received for transportation by carriers and delivered by them to consignees being of primary and fundamental importance, the use of estimated weights based upon the cubical contents of the load and the test weight per bushel of the grain and grain products, or otherwise, will not be accepted. All shipments shall be carefully weighed by competent weighers upon scales that are known to be accurate within the limits of tolerance stated in scale specifications.

(b) Inspection of scales—Before weighing grain and grain products to and from cars, the scale and all other facilities to be used must be thoroughly inspected to ascertain whether they are in proper working condition, necessary adjustments or repairs, if any required, must be made, and an accurate and complete record thereof shall be entered at the time of inspection.

(c) Shipping weights—Where the shipper weighs the grain or grain products for shipment and a claim for loss and damage is subsequently filed on that shipment, the shipper shall furnish the carrier with whom the claim is filed certificates of weight showing car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft; the date and time of weighing; whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight; and the number of grain doors used. This information should be furnished at the time the claim is filed.

(d) Destination weights—Where the consignee weighs a shipment of grain or grain products and a claim for loss and damage is subsequently filed on the shipment, the consignee shall furnish the carrier with whom the claim is filed certificates of weight showing the car initials and number; the kind of grain or grain products; the total scale weight; the type and house number of the scale used; the number of drafts and weight of each draft, and the date and time of weighing; and whether the weight is official, board-of-trade, grain-exchange, State, or other supervised weight. This information should be furnished at the time the claim is filed.

(e) A difference in weights at origin and destination, both of which are based on supervised scales, establishes *prima facie* that the loss occurred in transit and that the railroad is liable.

When a difference in weights is based in part on an unsupervised weight, which nevertheless, was accepted by the railroad as the basis for assessing freight charges, such unsupervised weight in combination with a supervised weight establishes *prima facie* that the loss occurred in transit and the railroad is liable. When a difference in weights is based in part on an unsupervised weight, with the above exception, a *prima facie* case of railroad liability for loss in transit has *not* been established. Such difference in weights is a factor, however, to be considered in connection with other evidence that a clear-record car arrived at destination with seals intact and unbroken or that the shipper made a written complaint that any car placed for loading was defective, in response to which the railroad filed a written report after investigation of the complaint. See paragraph (c) of § 1037.3.

§ 1037.2 Cars.

(a) A car is not in suitable condition for the transportation of bulk grain and grain products when it is defective and a car is defective, among other reasons, when it has deteriorated doorposts to which grain doors cannot be securely attached by the use of retention straps.

(b) The rules prescribed in this part 1037, apply on shipments of bulk grain and grain products transported solely in railroad-owned and railroad-leased cars.

(c) Cars with open-top linings tendered by the railroads may be used by the shipper without jeopardizing any subsequent claim which may be filed.

§ 1037.3 Claims.

(a) In computing the amount of the loss for which the carrier will pay there will be deducted from the gross amount of the ascertained actual loss one-fourth of 1 percent of the established loading weight to cover invisible loss and waste; provided, however, that where grain and grain products heat in transit and investigation shows that the invisible loss resulting therefrom exceeded one-fourth of 1 percent of such other amount as may hereafter be fixed in the manner above stated, and that the carrier is not otherwise liable for said loss, then the ascertained actual amount of the invisible loss due to heating of the grain and grain products will be deducted.

(b) Where investigation discloses a defect in equipment, seal or seal record, or a transfer in transit by the carrier of a carload of bulk grain or grain products upon which the unloading weight is less than the loading weight and the shipper furnishes duly attested certificates showing the correctness of the claimed weight, and investigation fails to show that the discrepancy is due to defective scales or other shipper facilities, or to inaccurate weighing or other error at point of origin or destination, or to fraud, then the resulting claim will be adjusted subject to the deductions authorized in the immediately preceding paragraph (a) of this § 1037.3; provided, however, that the clear record of either the carrier's or shippers' facilities shall not be interpreted as affecting or changing the burden of proof now lawfully resting upon either party. Therefore, movement in a clear-record car is not conclusive evidence of the fact that the car is not defective. It must be considered along with other evidence to determine liability. See paragraph (e) of § 1037.1

(c) In case of a disputed claim, the records of both the carrier and the claimant affecting the shipment involved shall be available to both parties. These records shall include a written complaint, if any, filed by the shipper with the railroad at the time the car was placed for loading that the car was defective, and the written report of an investigation of the complaint, filed by the railroad with the shipper, if made.

PART 1039—CONTRACTS AND EXEMPTIONS

Sec.

1039.1 Definition.
1039.2 Lawfulness.
1039.3 Approval.
1039.4 Common carrier obligation.
1039.10 Fresh fruit and vegetable exemption.
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Sec.
1039.13 Rail intermodal transportation exemption.

AUTHORITY: 49 U.S.C. 10321(a).

SOURCE: 43 FR 58189, Dec. 13, 1978, unless otherwise noted.

§ 1039.1 Definition.

A "contract rate" is a railroad freight rate arrived at through mutual agreement between a railroad (or two or more railroads participating in a through route) and a shipper in which the railroad agrees to provide service for a given price and the shipper agrees to tender a given amount of freight during a fixed period.

§ 1039.2 Lawfulness.

Contract rates are not in and of themselves unlawful, and they may be beneficial in many situations. Anticompetitive effects, if any, may be outweighed by other considerations. Such rates may provide opportunities for railroads to develop innovative pricing strategies. They can result in lower shipping costs, better freight car utilization, increased efficiency, and improved service. They can enhance a railroad's ability to compete with carriers of other modes, and they can make it possible for both railroads and shippers to make future plans on an informed basis.

§ 1039.3 Approval.

Contract rates may be filed with the Commission under normal procedures, and their lawfulness will be determined on a case-by-case basis. A contract rate may be approved regardless of its duration or of the ownership of the cars to be used in performing the service. Contract rates based on a percentage of the shipper's traffic, rather than on a fixed volume, are not condemned, but they will be approved following the closest scrutiny by the Commission to determine whether they are economically justified and not anticompetitive.

§ 1039.4 Common carrier obligation.

Railroads performing service under contract rates will not be relieved of their obligations as common carriers to serve other shippers. When a contract rate is made for one shipper, other shippers willing and able to ship a like kind of traffic under substantially similar circumstances and conditions should be afforded the opportunity to enter into similar contract rates.

§ 1039.10 Fresh fruit and vegetable exemption.

The rail transportation of the commodities listed below are exempt from the provisions of Subtitle IV of Title 49, except that carriers must continue to comply with Commission accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption and must maintain copies, rates, charges, rules, or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 1)], within 30 days, of the fact that they are using the exemption. The record maintenance requirement will remain in effect for a period of one year, to be extended if necessary. All tariffs pertaining to the transportation of fresh fruits and vegetables will no longer apply to the commodities listed below except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number, are:

01 2: Fresh Fruits or Tree Nuts except; 01 232: Bananas; Citrus pomace, 20-421-27; 01 294: Cocoa beans; 01 295: Coffee, green; and 01 3: Fresh Vegetables and Shelled Walnuts, 20-712-12

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, ICC STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

(49 U.S.C. 10505, 10101, 10321)

[44 FR 18229, Mar. 27, 1979, as amended at 46 FR 9608, Jan. 29, 1981; 46 FR 15509, Mar. 6, 1981; 46 FR 32025, June 19, 1981]

§ 1039.11 Miscellaneous commodities exemption.

The rail transportation of the commodities listed below is exempt from the provisions of Subtitle IV of Title 49, except that carriers must continue to comply with Commission accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex. Parte No. 346 (Sub-No. 2)], within 30 days, of the fact that they are using the exemption. The record maintenance requirement will remain in effect for a period of one year, to be extended if necessary. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number, are:

01	143	.....	Peanuts.
01	194	.....	Potatoes, sweet.
01	195	.....	Potatoes, other than sweet.
01	232	.....	Bananas.
01	294	.....	Cocoa beans.
01	295	.....	Coffee, green.
01	916	.....	Mushrooms, fresh.
01	341	.....	Beans, dry ripe.
01	342	.....	Peas, dry.
01	343	.....	Cowpeas, lentils, or lupines.
09	1	.....	Fresh fish or other Marine Products.
01	159	46	Austrian Winter Pea Seeds.
01	159	48	Peas (Seeds), Caley or Singletary (Wild) Winter (Seeds) Peas.
01	159	70	Beans, Velvet, Dried, or in Pods.
01	159	71	Seed Beans.
01	159	74	Seed Peas, nec.
01	349	.....	Field Dry Ripe Vegetable Food Seeds, nec.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, ICC STCC 6001-C. Nothing in this exemption shall be construed to affect our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

[45 FR 20484, Mar. 28, 1980, as amended at 46 FR 27343, May 19, 1981]

§ 1039.13 Rail intermodal transportation exemption.

Railroad and truck transportation provided by a rail carrier as part of a continuous intermodal movement is exempt from the provisions of Subtitle IV of Title 49 with certain exceptions. Carriers must continue to comply with Commission accounting and reporting requirements. All railroad tariffs pertaining to the transportation of intermodal freight will no longer apply except to the extent adopted by carrier quotations. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

(49 U.S.C. 10321(a) and 10505)

[46 FR 14351, Feb. 27, 1981; 46 FR 47797, Sept. 30, 1981]

PARTS 1040–1069—MOTOR CARRIERS—BROKERS—GENERAL

PART 1041—INTERPRETATION—CERTIFICATES AND PERMITS

Subpart A—Motor-Carrier Operation Involving Traversal States

Sec.

1041.1 Interpretation of outstanding certificates and permits.
1041.2 Policy to be observed in the future.
1041.3 Requirements to be met.

Subpart B—Interpretation of Operating Rights.

1041.10 Return of containers and other shipping devices.
1041.11 Service to, from, and between points in each Alaska and Hawaii.

Sec.

1041.12 Service to or from points within one airline mile of the highway or highways composing the regular route or routes of a motor common carrier of passengers.
1041.13 Truckload lot restriction.
1041.20 Operating authority to serve particular municipality, construction.
1041.21 Operating authority to serve particular unincorporated community, construction.
1041.24 Special or chartered party service.
1041.25 Operating authority granted to private motor carriers.

AUTHORITY: Sec. 204, 49 Stat. 546, as amended; 49 U.S.C. 304, unless otherwise noted.

SOURCE: 32 FR 20027, Dec. 20, 1967, unless otherwise noted.

Subpart A—Motor-Carrier Operation Involving Traversal States

§ 1041.1 Interpretation of outstanding certificates and permits.

All certificates and permits heretofore issued to motor carriers authorizing operations over irregular routes which necessitate that the carriers, in performing their authorized services, pass through states other than those in which they are authorized to receive or discharge passengers or freight, are interpreted as follows:

(a) *Where no "traversal states" are named.* Carriers may operate through any state which affords a reasonably direct or logical route between the points authorized to be served.

(b) *Where "traversal states" are named.* Whether all or only a portion of such states are named, the carriers may operate not only through the "traversal states" named but also through any other state or states which afford a reasonably direct or logical route between the points authorized to be served, unless the language clearly and unmistakably shows that "traversal states" were named as a specific restriction or prohibition against operating in any state other than those specified.

§ 1041.2 Policy to be observed in the future.

On and after the effective date of this part "traversal states" will not be named in a certificate or permit except when the record discloses that such should be done as a definite restriction and on a showing of public convenience and necessity, in the case of a common carrier, or consistency with the public interest and the national transportation policy, in the case of a contract carrier; otherwise, operations may be performed as indicated in § 1041.1(a).

§ 1041.3 Requirements to be met.

Before instituting any operations, pursuant to this part, through a state or states not named in its certificate or permit, the carrier shall (a) give notice in writing, accompanied by a copy of its operating authority, to the state regulatory body or bodies of such state or states, (b) designate a process agent for each such state, as required by section 221(c) of the Interstate Commerce Act, and (c) comply with the provisions of Rule VIII of the Commission's insurance regulations regarding the filing of insurance by a company licensed to do business in each such state (§ 1043.8 of this chapter).

Subpart B—Interpretation of Operating Rights

§ 1041.10 Return of containers and other shipping devices.

All certificates and permits issued to motor carriers are interpreted as authorizing the return transportation of empty boxes, crates, cases, barrels, drums, baskets, hampers, cans, bottles, hangers, sacks, cones, spools, skids, pallets, blocks, bracing, and other containers and shipping devices of a nature similar to those described, and of dunnage, from the destination to the origin of a commodity or commodities transported by a motor carrier under a certificate or permit provided the containers or other shipping devices were used in the outbound transportation of the commodity or commodities by the motor carrier.

(Secs. 207, 208, 209, 49 Stat. 551, 552, as amended; 49 U.S.C. 307, 308, 309)

§ 1041.11 Service to, from, and between points in each Alaska and Hawaii.

Certificates and permits issued to motor carriers, licenses issued to brokers, and permits issued to freight forwarders, prior to August 21, 1959, authorizing service from a point or area "to points in the United States" are interpreted as authorizing service from the originating point to points in the District of Columbia and the 48 States constituting the United States prior to the admission of Alaska and Hawaii; those authorizing service from "points in the United States" to particular destination points or areas are interpreted as authorizing service from points in the District of Columbia and the 48 States constituting the United States prior to the admission of Alaska and Hawaii to the specified destination points or areas; those authorizing service "between points in the United States" are interpreted as authorizing service between points in the District of Columbia and the 48 States constituting the United States prior to the admission of Alaska and Hawaii; and those authorizing service at points described in text which depends for its meaning upon the definition of "States" or "United States" are interpreted as authorizing service at only those points which were within the meaning of the text at the time of issuance thereof.

(Secs. 207, 208, 209, 211, 403, 310, 49 Stat. 551, 552, as amended, 554, as amended, 546, as amended, 56 Stat. 285, 291, as amended; 49 U.S.C. 307, 308, 309, 311, 1003, 1010)

[37 FR 14308, July 19, 1972; 37 FR 16944, Aug. 23, 1972]

§ 1041.12 Service to or from points within one airline mile of the highway or highways composing the regular route or routes of a motor common carrier of passengers.

(a) *Definition and construction.* For the purpose of this section:

(1) The terms "municipality" and "unincorporated area" shall be defined as set forth in § 1048.100(a) and (b) of this chapter;

(2) An "airline" mile shall be construed to mean a statute mile.

(b) *Regular-route motor carrier of passengers.* A common carrier by motor vehicle holding a certificate, issued by the Interstate Commerce Commission pursuant to the provisions of Part II of the Interstate Commerce Act, authorizing the transportation of passengers between two or more points over a defined route or segment thereof, and authorizing service at all intermediate points thereon, may serve (1) all municipalities situated wholly within one airline mile of the highway or highways composing the carrier's authorized service routes, portions, or segments thereof, (2) all unincorporated areas within one airline mile of the highway or highways composing the carrier's authorized service routes, portions, or segments thereof, and (3) all military establishments, airports, schools, or other similar public or private establishments, not situated in a municipality, which may be entered within one airline mile of the highway or highways composing the carrier's authorized service routes, portions or segments thereof: *Provided, however,* That operation within any part of such establishment more than one airline mile from such designated (authorized) highway is not over a public road.

(c) *Exceptions.* The rule promulgated in paragraph (b) of this section shall not be applicable to the operations of any motor common carrier of passengers (1) within New York, N.Y., (2) within Rockland, Westchester, Orange, or Nassau Counties, N.Y., (3) within Fairfield County, Conn., (4) within Passaic, Bergen, Essex, Hudson, Union, Morris, Somerset, Middlesex, or Monmouth Counties, N.J., and (5) within the commercial zone of Washington, D.C., as defined by the Commission.

(Secs. 207, 208, 49 Stat. 551, 552; 49 U.S.C. 307, 308)

§ 1041.13 Truckload lot restriction.

Truckload lot restrictions, with or without additional minimum weight provisions, embraced in certificates of public convenience and necessity issued by the Interstate Commerce Commission pursuant to sections 206 and 207 of the Interstate Commerce Act, shall be considered as of no further force and effect, and such certificates shall be considered as author-

izing transportation services without regard to such restrictions, for the reasons and in the manner more fully set forth in the report of the Commission in Ex Parte No. MC-68, Removal of Truckload Lot Restrictions, 106 M.C.C. 455, decided January 15, 1968.

(Secs. 204, 206, 207, 208, 49 Stat. 546, as amended, 551, as amended, 552, as amended; 49 U.S.C. 304, 306, 307, and 308)

[33 FR 2711, Feb. 8, 1968]

§ 1041.20 Operating authority to serve particular municipality, construction.

A certificate or permit issued by the Commission to any motor carrier of property pursuant to the provisions of Part II of the Interstate Commerce Act or to any freight forwarder under Part IV of the act, authorizing service at a particular municipality, shall be construed as authorizing service at all points or places which are within the commercial zone of that municipality as defined by the Commission and not beyond the territorial limits, if any, fixed in such certificate or permit on the authority granted except that this finding shall not apply in the case of a certificate or permit authorizing service by a motor carrier of property or motor carrier of passengers in the transportation of express or freight forwarder at any municipality at which the commercial zone exemption provided by section 203(b)(8) of the act has been removed in whole or in part by this Commission.

(49 Stat. 543, as amended, 544, as amended, 546, as amended; 49 U.S.C. 302, 303, 304)

[32 FR 20027, Dec. 20, 1967, as amended at 42 FR 51586, Sept. 29, 1977]

§ 1041.21 Operating authority to serve particular unincorporated community, construction.

A certificate or permit issued to a motor carrier of property or motor carrier of passengers in the transportation of express pursuant to the provisions of Part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) or to any freight forwarder under Part IV of the act (49 U.S.C. 1001 et seq.) authorizing service at a particular unincorporated community having a post office of the same name shall be construed as authorizing service at all points which are within the United States and not beyond the territorial limits, if any,m fixed in such certificate or permit on the authority granted, as follows: (a) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more, (b) at all points in any municipality any part of which is within the limits described in paragraph (a) of the section and (c) at points in any municipality wholly surrounded, or so surrounded except for a water boundary by any municipality included under the terms of paragraph (b) of this section.

(49 Stat. 543, as amended, 544, as amended, 546, as amended; 49 U.S.C. 302, 303, 304)

[41 FR 56653, Dec. 29, 1976, as amended at 42 FR 51586, Sept. 29, 1977]

§ 1041.24 Special or chartered party service.

A certificate issued by the Commission to any motor carrier of passengers pursuant to the provisions of part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) authorizing the transportation of passengers and their baggage, in charter operations, (a) from a described point, points, or territory to another described point, points, or territory, and return, or (b) beginning and ending at a described point, points, or territory, and extending to another described point, points, or territory, shall be construed as authorizing the transportation of charter groups pursuant to round trip contracts with third parties, as defined in § 1054.2, without regard to the identity of the individuals transported for each segment of trip.

[41 FR 27838, July 7, 1976]

§ 1041.25 Operating authority granted to private motor carriers.

Where a motor carrier receives operating authority and intends to use it primarily as an incident to the carriage of its own goods and its own nontransportation business, the carrier's issued authority implies that the carrier shall conduct its for-hire motor car-

rier activities and its other activities independently, and shall maintain separate records for each activity.

[45 FR 86789, Dec. 31, 1980]

PART 1042—MOTOR CARRIER ROUTING REGULATIONS

Subpart A—Motor Carriers of Passengers

Sec.
1042.1 Superhighway rules—motor common carriers of passengers.
1042.2 Deviation rules—motor carriers of passengers.

Subpart B—Motor Carriers of Property

1042.10 General.
1042.11 Elimination of routing restrictions—regular-route carriers.
1042.12 Elimination of gateways—regular-and-irregular-route carriers.
1042.13 Redesignated highways.

Subpart A—Motor Carriers of Passengers

AUTHORITY: 49 Stat. 546, as amended, 551, as amended, 552, as amended; 49 U.S.C. 304, 307, 308.

SOURCE: 34 FR 18459, Nov. 20, 1969, unless otherwise noted. Designated at 45 FR 86745, Dec. 31, 1980.

§ 1042.1 Superhighway rules—motor common carriers of passengers.

(a) *Superhighway certification—common carriers of passengers.* Upon the filing of an appropriate application for authority to operate over superhighways as defined below, upon the showing prescribed herein, and upon approval by the Commission, a motor common carrier of passengers establishing that it holds a certificate of public convenience and necessity, issued by the Commission pursuant to the provisions of part II of the Interstate Commerce Act, authorizing transportation over a regular service route or routes, will be granted appropriate certificated authority to operate over, and serve points on, the superhighways (including highways connecting such superhighways with the carrier's authorized regular service route or routes), between the point of departure from and the point of return to the carrier's authorized regular service route or routes: *Provided,* That use of such superhighway route will not materially change the competitive situation between such carrier and any other carrier or carriers.

(b) *Superhighway defined.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, and any direct existing highway, not a limited-access highway, located immediately adjacent to a planned superhighway.

(c) *Governing criteria.* (1) The criteria to be used in determining whether there would be any material change in the competitive situation shall include, among others, the following: (i) The mileage over the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes compared with the mileage over the carrier's authorized regular service route or routes between the same points; (ii) the extent to which the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) parallels or extends in the same general direction as the authorized service route or routes of the carrier between the point of departure from and the point of return to the carrier's authorized regular service route or routes; (iii) the running times over the authorized regular service route or routes of the applicant and other certificated regular-route carriers between the point of departure and the point of return compared with the running times over the proposed route between the same points; (iv) the period of time during which schedules have been operated over the carrier's authorized regular service route or routes between the point of departure and the point of return together with the frequency with which such schedules have been operated; (v) the volume of local or overhead traffic which would be convenienced by use of the proposed route; and (vi) the quantum and frequency of single-line

or joint-line service provided by other carriers.

(2) Proof that the distance over the proposed superhighway route (including highways connecting such superhighway route with the carrier's authorized regular service route or routes) between the point of departure from and the point of return to the carrier's authorized regular service route or routes is not less than 90 percent of the distance between such points over the carrier's authorized regular service route or routes shall constitute prima facie evidence that a material change in the competitive position would not result from the carrier's use of the proposed route: *Provided,* That such carrier shall not pick up or discharge passengers at any point not otherwise specifically authorized to be served by it. Where the unrestricted use of the proposed route would materially change any such competitive situation, but such change could be prevented by the imposition of an appropriate restriction (proposed by applicant and acceptable to the Commission), the Commission may authorize the use of the proposed route subject to such restriction.

(d)(1) *Application.* The application on the form prescribed therefor, must be verified and the original and two copies thereof must be filed with the Commission. It shall contain the following information:

(i) A complete description by highway designations of the carrier's authorized route between the point of departure and the point of return.

(ii) An excerpt from the carrier's operating authority or authorities (with reference to the pertinent subnumber or numbers) setting forth the exact description of the route as specified in paragraph (d)(1)(i) of this section, including service authorized at any intermediate points and any applicable restrictions or conditions in said authority or authorities.

(iii) A complete description by highway designations of other authorized routes, including service authorized at any intermediate points and applicable restrictions and conditions specifically pertinent to and affected by the departure from the authorized route specified in paragraph (d)(1)(i) of this section.

(iv) A complete description of the proposed route between the point of departure from the authorized route to the point of return.

(v) The actual mileages over all routes described in paragraphs (d)(1)(i) and (iv) of this section. Such mileages shall be computed between the actual junction points of the routes, whether such junction points are within or without city limits. Rand McNally road map mileages will serve as the official mileage guide where such mileages have been published. Where not published, measured mileage or available official publications will be accepted.

(vi) A map clearly depicting and identifying all routes described in paragraphs (d)(1)(i) through (iv) of this section.

(vii) A statement that the carrier will continue to provide adequate and continuous service from and to all points authorized to be served in connection with the appurtenant service route or routes.

(viii) The operating time over the appurtenant service route or routes between points affected by the proposed route as compared with that over the proposed route.

(ix) The volume of local and through traffic between the points of departure and return.

(x) A statement that a copy of the application, together with all attachments, has been served on those persons required to be served by these rules.

(2) *Service of application.* The application, with all attachments, must be served by mail or in person on the Commission, the district director of the Commission for the district in which the carrier is domiciled and for each district in or through which the proposed operation will be conducted, and the State board or official having jurisdiction over motor carrier regulation of each State in or through which the proposed operation will be performed.

(3) *Publication of application.* A summary of the application will be prepared by the Commission and published in the FEDERAL REGISTER.

(4) *Protests and replies.* Any person may file with the Commission a verified protest, together with two copies thereof, within 30 days after publication of the summary of the application in the FEDERAL REGISTER, showing that a copy thereof with all attachments, has been served upon the applicant. Such protest shall contain a recital of facts and information specifically demonstrating protestant's interest and, if the protestant is a carrier, shall contain detailed information relating to the competitive situation between the protestant and the applicant. The applicant may file a verified reply to any protest within 20 days after the due date of the protest, showing that a copy of the reply, with all attachments, has been served upon the protestant or protestants. Such reply shall be directed solely to the information contained in the protest or protests.

(5) *Hearing or other procedure to be followed.* Where a protest is filed, oral hearing will not be held unless the Commission determines, either upon its own motion or upon a showing of good cause by a party to the proceeding, that oral hearing is necessary. Unless such a determination is made, the issues will be decided upon a consideration of the material submitted with the application, the protest, the reply, and matters of which the Commission may take official notice, except that the Commission, if it so desires, may require the submission of additional facts from the parties.

(6) *Certificates.* Upon consideration of the matters specified in this part the Commission will determine whether the issuance of operating authority is justified. If it is determined that issuance of operating authority is warranted, the Commission will issue a certificate which will not be severable, except upon the Commission's authorization, by sale or otherwise, from the appurtenant service route or routes described in the certificate. Appropriate conditions will be imposed requiring the carrier to maintain reasonable and adequate service over the appurtenant service route or routes named in the application.

(e) *Through-bus operation.* Where two or more certificated regular-route motor carriers of passengers have been joining in the lawful performance of "through-bus" operations between a point on a certificated route of one such carrier, and a point on a certificated route of another such carrier, and there is wholly within the United States a superhighway or combination of superhighways (including highways connecting such superhighway or superhighways with the carriers' authorized regular service routes) between such two points, the use of which would afford a reasonably direct and practicable route between such two points and a safer, more convenient, efficient, or economical operation, without materially changing the competitive situation between such carriers and any other carrier or carriers, such carriers so performing such joint "through-bus" operation may, upon application and approval by the Commission, use such superhighway or combination of superhighways (including highways connecting such superhighway or superhighways with the carriers' authorized regular service routes) as a service route for such joint "through-bus" service, with no service at any intermediate point thereon, except as authorized in their respective certificates, and with no service at the points of departure and return except as authorized in their certificates, and with no service at the point or points of interline except for interchange purposes only: *Provided, however,* That the application shall be executed and filed jointly by the carriers participating in the "through-bus" operation. Additionally, the carriers must specify with particularity the point or points on the proposed route where the operation, control, and responsibility of each carrier will begin and end; and whether an actual change of vehicles will take place at the point of interline or whether the operation will be performed in the same vehicle in a through movement under a leasing arrangement, in which case the carriers must supply details concerning the proposed vehicle interchange and related leasing arrangements.

(f) *Application, service, and publication thereof, protest and replies, hearing or other procedure to be followed,*

and the certificates. The provisions of paragraph (d) of this section with respect to the application, the service and publication thereof, protests and replies, the hearing or other procedure to be followed, and the certificate to be issued shall be applicable to paragraph (e) of this section.

§ 1042.2 Deviation rules—motor carriers of passengers.

(a) *Applicability of rules.* These rules are promulgated under the provisions of sections 204, 206 (except 206 (6) and (7)), 207, and 208 of the Interstate Commerce Act, and govern the use of all highways, including the National System of Interstate and Defense Highways, by motor common carriers of passengers operating under certificates of pubiic convenience and necessity issued by the Commission. These rules do not govern operations of regular-route motor common carriers of passengers which operations are wholly within an area including New York, N.Y., Rockland, Westchester, and Nassau Counties, N.Y., Fairfield County, Conn., and New Jersey. These rules do not supersede other rules and regulations of the Commission applicable to specific situations or operations.

(b) *Definitions.* As used in this section, the following words and terms shall be construed to have the following meanings:

(1) *Alternate route.* A designated highway or series of highways lying wholly within the United States over which a regular-route motor common carrier of passengers may operate for operating convenience only, serving no intermediate points and serving the termini only to the extent authorized over the existing appurtenant service route.

(2) *Bypass route.* A route designated by proper authorities for the general purpose of avoiding traffic congestion in a populated area or areas.

(3) *Deadheading empty vehicles.* The movement of empty vehicles incidental to either prior or subsequent transportation in interstate or foreign commerce subject to the Interstate Commerce Act.

(4) *Designated highway.* A highway identified for record purposes by a number, letter, or name, or as an "unnumbered county or State road," or in some other like manner.

(5) *Detour route.* The highway or highways designated by proper authority for public use while the highway or highways normally used between specified points is, or are, temporarily closed or restricted, as by reduced weight limits, or for repairs or construction, or for any other reason.

(6) *Deviation route.* Any of the route facilities and highways used by a motor carrier under authority of this section.

(7) *Emergency route.* A highway or segment thereof which is available for public use during periods of temporary emergency because of flood, slides, earthquake, or other like causes, which make a highway over which a motor carrier is authorized to operate temporarily impassable.

(8) *Point of deviation and return.* The point of deviation is the point at which a regular-route motor common carrier of passengers using or proposing to use a deviation route departs or proposes to depart from an authorized regular service route. The point of return is the point at which such carrier returns or proposes to return to an authorized regular service route.

(9) *Redesignated highway.* A highway to which there has been assigned a new designation, either number, letter, name, or other identifying reference, in lieu of a designation previously assigned thereto.

(10) *Regular service route.* A designated highway or series of highways over which a regular-route motor common carrier of passengers is specifically authorized to operate with provision in the carrier's certificate for service at terminal and intermediate points as specified thereon, as distinguished from an alternate route as herein defined. Such regular service route may be described as a single route in a carrier's operating authority or as two or more routes which are combined by joinder at a common service point or points.

(11) *Relocated highway.* A highway which has been constructed in a new location in lieu of an existing highway, or a segment or segments thereof, and which is intended to replace such ex-

isting highway, or a segment or segments thereof, for public use.

(12) *Service point.* A point authorized to be served by a carrier as distinguished from one through which such carrier may operate but without performing any service threat.

(13) *Superhighway.* Any limited-access highway with split-level grade crossings and access ramps, or completed portion thereof, including those highways which make up the National System of Interstate and Defense Highways, or any direct existing highway, not a limited access highway, located immediately adjacent to a planned superhighway.

(c) *Departures from regular authorized routes.* Subject to the special rules, requirements, and conditions governing particular situations hereinafter stated, and subject also to the general conditions and requirements set forth in paragraph (d) of this section, carriers subject to these rules are hereby authorized, in the circumstances hereinafter described, to depart from their regular authorized routes in the circumstances and to the extent hereinafter set forth.

(1) *Redesignated highway.* Where a highway, or a segment thereof, over which a carrier is authorized to operate is redesignated, the carrier shall so advise the Commission by letter, giving sufficient information regarding the old and the new designation, the points between which the highway designation has been changed, and the place or places where such highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

(2) *Relocated highway and abandonment of old highway.* Where a carrier is authorized to operate over a specified highway and thereafter that highway, or a segment or segments thereof, is or are relocated, and where the old highway or any segment thereof is no longer maintained for use by the general public, the carrier may operate over such relocated highway or relocated segment or segments under its authority without notice to the Commission of such change, but in so doing must continue to serve as intermediate points on the new highway, those points previously authorized to be served as intermediate points on the old highway.

(3) *Relocated highway and maintenance of service over old highway under new designation.* (i) Where a carrier is authorized to operate over, and to serve points on a specified highway, and thereafter that highway, or a segment or segments thereof, is or are relocated but the old highway is maintained for use by the general public under a new designation, the carrier shall not without first obtaining appropriate authority from the Commission, transfer its operations to the relocated highway or relocated segments thereof but must continue to operate over the old highway and advise the Commission by letter of the change in the designation thereof furnishing the same information as required in connection with paragraph (c)(1) of this section. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

(ii) Where a carrier is authorized to operate over a specified highway, but is not authorized to serve any point on such highway and thereafter such highway, or a segment or segments thereof, is or are relocated, but the old highway is maintained for the use by the public under a new designation, the carrier may, if it so desired, use as its operating route only the new or relocated highway, provided it promptly advises the Commission by letter of such change, giving descriptions of the old and new highways between the points involved and the other information required by paragraph (c)(1) of this section.

(4) *Bypass route.* Where a carrier is authorized to operate over a regular route, either service or alternate, and a bypass route has been designated to avoid congestion over the regular route, such carrier desiring to use such a bypass route as an alternate route may do so regardless of the ratio of the distance over such bypass route to the distance over the regular route between the point of deviation and the point of return without prior notice to the Commission, subject to the following conditions: Not later than 5 days

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after operation over the bypass route has begun, the carrier shall give notice of such operation to the Commission, the district director of the Commission for the district in which the carrier is domiciled and for each district in or through which the operation is or will be conducted, and the State board or official having jurisdiction over motor carrier regulation of each State in or through which the operation is or will be conducted. This notice must contain the following information:

(i) A complete description by highway designations of the carrier's authorized route between the point of deviation and the point of return, including authorized off-route points;

(ii) A complete description by highway designations of its proposed deviation route between the point of deviation and the point of return;

(iii) A map on which there shall be shown so much as may be practicable of the information required by paragraphs (c)(4)(i) and (ii) of this section;

(iv) A statement that the carrier shall continue to serve points authorized.

(5) *Bridges, tunnels, and ferries.* Where a new bridge or tunnel has been constructed to replace an old bridge, tunnel, or ferry, to avoid circuity, or to eliminate a hazardous curve or grade, a regular-route carrier having authority to use the old facility and desiring to use in lieu thereof such new bridge or tunnel and the approaches thereto, may do so, subject to the applicable safety regulations and subject also to the conditions and requirements set forth in paragraph (c)(4) of this section.

(6) *Detour and emergency routes.* Where a highway over which a carrier is authorized to operate is temporarily obstructed or rendered unsafe by flood, slides, earthquake, or other like causes over which the carrier has no control, the carrier may use any other practicable highway to continue rendering service to points on its authorized route. If a highway over which a carrier is authorized to operate is closed or subjected to weight or other restrictions by proper authority and another route is designated by such authority for use by the public as a detour route, the carrier may use such detour route in lieu of its authorized route. If the distance over the emergency or detour route is less than 90 percent of the distance over the authorized route and if use of the emergency or detour route will continue for more than 30 days, the carrier shall provide the notice set forth in paragraph (c)(4) of this section.

(7) *Deadheading empty vehicles.* A motor carrier may deadhead empty vehicles over any highway, the use of which is necessary or desirable to accomplish a reasonably direct and practicable movement thereof between any two points incidental to either prior or subsequent transportation in interstate or foreign commerce subject to the Interstate Commerce Act.

(8) *Service at military installations.* (i) If there exists an entrance or gate to a military installation which is within the limits of the authority held by a motor carrier and the carrier with the consent and approval of the officer in charge is openly, lawfully, and regularly (as distinguished from surreptitiously, sporadically, or infrequently) using such entrance or gate in the rendition to or from the installation of (*a*) a general transportation service or (*b*) a specialized or limited service, and if such entrance or gate is by appropriate authority closed, or restricted against particular traffic or if for some other reason beyond its control the carrier is unable to continue to use that entrance or gate for the same purpose as in the immediate past, it may, subject to the general conditions and requirements set forth in paragraph (c)(4) of this section, use other entrances or gates in continuing to serve the installation in the same manner and in the rendition of the same type of service as was theretofore performed through the closed or restricted entrance or gate.

(ii) This paragraph shall not be construed by any carrier as authority for the rendition, through an entrance or gate which is located outside the limits of its authority, of any service which was in fact discontinued prior to the closing or restriction of the authorized gate or entrance, or any service essentially different from that rendered through the gate or entrance located within the limits of its authority im-

mediately prior to the closing or restriction thereof.

(9) *Deviations—alternate routes without certificate—common carrier.* (i) Where a regular-route motor common carrier of passengers is authorized to operate over a regular route and there is wholly within the United States another highway which affords a reasonably direct and practicable route between any two points on such regular route, it may, subject ot the general conditions and requirements set forth in paragraph (d)(1) through (5) of § 1042.1, except that the notice and any protests and replies thereto may be in letter form and need not be verified, and need not be served on official governing bodies of local points, use such other highway as an alternate route for operating convenience only and with no service at the termini except as otherwise authorized, in the manner and to the extent, as follows:

Where such carrier is authorized to operate over a regular route and there is a highway or highways which may be used as an alternate route between two points on the carrier's regular route regardless of the ratio of the distance over such alternate route between the point of deviation and the point of return to the distance over the carrier's regular service route between the same points, and regardless of whether or not such alternate route crosses or intersects or passes over or under any other specifically authorized service or alternate route of the carrier at any place intermediate to the points of deviation and return: *Provided,* That use of the alternate route will not materially change the competitive situation between such carrier and any other.

(ii) Proof that the mileage over the proposed alternate route between the point of deviation and the point of return to the carrier's authorized service route or routes is not less than 90 percent of the distance between such points over the carrier's authorized regular service route or routes shall constitute prima facie evidence that a material change in the competitive position will not result from the carrier's use of the proposed alternate route.

(iii) If a protest has not been filed within 30 days from the date of publication of notice of the proposed operation in the FEDERAL REGISTER, the operation may be commenced immediately thereafter subject to the provisions of paragraph (d)(5) of this section. In all cases in which protests are filed to a proposed new operation, the applicant may not commence operation over the route or routes applied for until an appropriate order is issued by the Commission.

(d) *Miscellaneous conditions*—(1) *Failure to give notice or defective notice.* Where an application for a deviation is required under paragraphs (c)(4), (5), (6), or (8) of this section, and such notice is not timely filed and served as required, any deviation operation begun prior to the actual filing and service of the application is unauthorized, and where an application, though filed, is defective for want of required information or insufficient service or for any other reason, it shall be subject to rejection and if rejected, any deviation operation covered thereby which has been begun shall immediately be discontinued and shall not be resumed until a sufficient application has been filed, and served on interested parties as required by these rules, and the carrier has been notified by the Commission that the operation may be resumed.

(2) *Reasonable and adequate service.* The right to operate over a deviation route which is subject to the general conditions and requirements set forth in these rules shall continue only so long as the carrier is performing, when required by this part, reasonable and adequate service over specifically authorized routes, and only so long as the conditions set forth in these rules are observed.

(3) *Certification.* Each notice, protest, and reply filed under these rules shall contain the following certification:

I certify that I am aware that anyone who, in any matter within the jurisdiction of any agency of the United States, intentionally makes or uses any false, fictitious, or fraudulent writing or document, may be subject to prosecution and fined up to $1,000 and imprisoned for up to 5 years (18 U.S.C. 1001).

(4) *Other remedies.* Applications seeking authority to conduct operations which could be performed fol-

lowing an appropriate filing under these revised deviation rules, will, in the absence of good cause shown, be subject to dismissal by the Commission.

(5) *Commission may forbid deviation.* The Commission may forbid the commencement of operations over any deviation route under this part, or require discontinuance of any such operations already commenced, whenever in its opinion such deviation results in inadequate service over specifically authorized routes, or is unreasonable, or otherwise repugnant to the public interest, or is not in harmony with the general purpose and intent of the rules and regulations established by this part.

(6) *Prior filings.* Motor carriers of passengers lawfully utilizing any deviation route or facility referred to herein pursuant to a prior notice heretofore filed shall not be required to file any further notice with the Commission concerning the use of such route, facility, or facilities.

(7) *Severability of deviation routes.* Operations over approved deviation routes shall not be severable by sale or otherwise from the underlying certificated authority to which such operations are appurtenant. Sale, lease, or other transfer of said underlying certificated authority shall have the concurrent effect of selling, leasing, or otherwise transferring any approved deviation routes appurtenant to such certificated authority.

Subpart B—Motor Carriers of Property

AUTHORITY: 49 U.S.C. 10321 and 10922 (h)(1)(A) and 5 U.S.C. 553.

SOURCE: 45 FR 86745, Dec. 31, 1980, unless otherwise noted.

§ 1042.10 General.

(a) *Scope of this subpart.* This subpart implements 49 U.S.C. 10922(h)(1)(A) by eliminating gateway restrictions and circuitous route limitations imposed upon motor common carriers of property. It permits direct service where indirect operations may be performed (1) over a single regular route or (2) over combinations of regular routes or irregular routes, or both, through a common service point.

(b) *Separate authorities that may be tacked.* In the absence of a restriction to the contrary, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service under the following circumstances:

(1) Regular-route authorities may be tacked with one another.

(2) Regular-route authority may be tacked with irregular-route authority.

(3) Irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less.

(4) Irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 1042.11 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.* All certificates which, either singly or in combination, authorize the transportation by a motor common carrier of property over (1) a single regular route or (2) over two or more regular routes which can lawfully be tacked at a common service point shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points located within 1 airline mile of an alternative route it elects to use if all the following conditions are met:

(1) The carrier is authorized to serve all intermediate points (without

regard to nominal restrictions) on the underlying service route.

(2) The alternative route involves the use of a superhighway (that is, a limited access highway with split-level crossings).

(3) The alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route, (i) extends in the same general direction as the carrier's authorized service route and (ii) is wholly within 25 airline miles of the carrier's authorized service route.

(4) Service is provided in the same manner as, and subject to any restrictions that apply to, service over the authorized service route.

§ 1042.12 Elimination of gateways—regular- and irregular-route carriers.

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they can lawfully be tacked to perform through service, may perform such through service over any available route.

§ 1042.13 Redesignated highways.

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

Sec.

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AUTHORITY: 49 Stat. 546, as amended, 554, as amended, 557; 49 U.S.C. 304, 311, 315.

SOURCE: 32 FR 20032, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCE: Prescribed forms relating to this part are listed in Part 1003 of this chapter.

§ 1043.1 Surety bond, certificate of insurance, or other securities.

(a) *Property damage; public liability.* Except as provided in paragraph (c) of this section, no common or contract carrier subject to Part II of the Interstate Commerce Act shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed in § 1043.2, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Part II, Interstate Commerce Act, or for loss of or damage to property of others.

(b) *Common carriers—cargo insurance; exempt commodities.* Except as provided in paragraph (c) of this section, no common carrier by motor vehicle subject to part II of the Interstate Commerce Act shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in

the amounts prescribed in § 1043.2, conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service: *Provided,* That the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Agricultural ammonium nitrate.
Agricultural nitrate of soda.
Anhydrous ammonia—used as a fertilizer only.
Ashes, wood or coal.
Bituminous concrete (also known as blacktop or amosite), including mixtures of asphalt paving.
Cement, dry, in containers or in bulk.
Cement, building blocks.
Charcoal.
Chemical fertilizer.
Cinder blocks.
Cinders, coal.
Coal.
Coke.
Commercial fertilizer.
Concrete materials and added mixtures.
Corn cobs.
Cottonseed hulls.
Crushed stone.
Drilling salt.
Dry fertilizer.
Fish scrap.
Fly ash.
Forest products; viz: Logs, billets, or bolts, native woods, Canadian wood or Mexican pine; pulpwood, fuel wood, wood kindling; and wood sawdust or shavings (shingle tow) other than jewelers' or paraffined.
Foundry and factory sweepings.
Garbage.
Gravel, other than bird gravel.
Hardwood and parkay flooring.
Haydite.
Highway construction materials, when transported in dump trucks and unloaded at destination by dumping.
Ice.
Iron ore.
Lime and limestone.
Liquid fertilizer solutions, in bulk, in tank vehicles.
Lumber.
Manure.
Meat scraps.
Mud drilling salt.
Ores in bulk, including ore concentrates.
Paving materials, unless contain oil hauled in tank vehicles.
Peat moss.
Peeler cores.
Plywood.
Poles and piling, other than totem poles.
Potash, used as commercial fertilizer.
Pumice stone, in bulk in dump vehicles.
Salt, in bulk or in bags.
Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.
Sawdust.
Scoria stone.
Scrap iron.
Scrap steel.
Shells, clam, mussel, or oyster.
Slag, other than slag with commercial value for the further extraction of metals.
Slag, derived aggregates—cinders.
Slate, crushed or scrap.
Slurry, as waste material.
Soil, earth or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.
Stone, unglazed and unmanufactured, including ground agricultural limestone.
Sugar beet pulp.
Sulphate of ammonia, in bulk, used as fertilizer.
Surfactants.
Trap rock.
Treated poles.
Veneer.
Volcanic scoria.
Waste, hazardous and nonhazardous, transported solely for purposes of disposal.
Water, other than mineral or prepared water.
Wood chips, not processed.
Wooden pallets, unassembled.
Wrecked or disabled motor vehicles.
Other materials or commodities of low value, upon specific application to and approval by the Commission.

(c) *Carriers partially exempt; leased rights.* The requirements of paragraphs (a) and (b) of this section shall not apply to motor carrier operations partially exempt from regulation by sections 202(c) and 203(b) (49 U.S.C. 302(c) and 303(b)), or to motor carriers which have, with the approval of the Commission, leased their entire operating rights to others, but only so long as the lessee of such rights, with the approval of the Commission, continues such operations. Lessors may not resume operations unless and until full compliance is effected.

(d) *Continuing compliance required.* Such security as is accepted by the Commission in accordance with the requirements of sections 211(c) and 215

of Part II, Interstate Commerce Act, shall remain in effect at all times.

[32 FR 20032, Dec. 20, 1967, as amended at 34 FR 3628, Feb. 28, 1969; 46 FR 41518, Aug. 17, 1981]

§ 1043.2 Insurance, minimum amounts.

The minimum amounts referred to in § 1043.1 are hereby prescribed as follows:

(a) *Motor carriers: bodily injury liability, property damage liability.*

(1) Kind of equipment	(2) Limit for bodily injuries to or death of one person	(3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $100,000 for bodily injuries to or death of one person)	(4) Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger equipment (seating capacity): 12 passengers or less	$100,000	$300,000	$50,000
More than 12 passengers	100,000	500,000	50,000
Freight equipment: All motor vehicles used in the transportation of property	100,000	300,000	50,000

(b) Motor common carriers; cargo liability. Security required to compensate shippers or consignees for loss or damage to property belonging to shippers or consignees and coming into the possession of motor carriers in connection with their transportation service, (1) for loss of or damage to property carried on any one motor vehicle—$5,000; (2) for loss of or damage to or aggregate of losses or damages of or to property occurring at any one time and place—$10,000.

(c) *Temporary rules: motor carriers of property.* (1) In compliance with Sections 10927, Title 49 of the United States Code, the Interstate Commerce Commission has undertaken a rulemaking proceeding to provide for the filing of a motor carrier automobile bodily injury and property damage liability certificate of insurance. The proposed required filing certifies that the Interstate Commerce Commission's prescribed motor carrier automobile bodily injury and property damage liability endorsement form with a basic single limit liability amount (which may include public liability and environmental restoration coverage for freight vehicles of GVW ratings of 10,000 pounds or more) of $500,000 is attached to the insurance policy. The proposed rulemaking also would require additional letter filings for any excess amounts required under the rules established by the Secretary of Transportation.

(2) The Interstate Commerce Commission has revised the endorsement Form B.M.C. 90, to accommodate an increase in the minimum required bodily injury and property damage insurance limits of liability for motor carriers of property. Copies of the revised form have been mailed to all insurance companies which have been qualified to make filings with the Commission. That revised form adopted in the decision and final rules to be effective July 1, 1981, but now stayed is readopted and is unchanged.

(3) To avoid the necessity for filing new certificates of insurance for affected motor property carriers in lieu of those now on file with the Commission the following rule is in effect. During the pendency of the rulemaking proceeding, beginning on and after September 11, 1981, 12:01 a.m. (standard time at the address of the insured stated in each policy of insurance), the Commission will deem any certificates of insurance (B.M.C. 91) which are on file for motor carriers of property, to certify that the insurance policy provides protection for the public at the

basic $500,000 single limit amount. This will be to the full extent, and subject to all of the terms, conditions, rights, and privileges, provided in revised Form B.M.C. 90, regardless of whether the prescribed endorsement has been attached physically to the policy. It will also be binding regardless of any contrary term, condition, stipulation, or agreement contained in the policy or any endorsement or notation thereof. This will allow carriers to maintain filings and yet allow adequate time for insurance companies to file with the Commission a notice of cancellation of the policy (B.M.C. 35), or to have a certificate terminated on the basis of a replacement certificate of insurance.

(4) Any certificate of insurance for an affected motor carrier of property received by the Commission on or after August 1, 1981, will be accepted as certifying increased amounts of insurance at the proposed basic and temporary single limit level of $500,000.

(5) The motor carrier bodily injury and property damage liability surety bond, B.M.C. 82, does not need to be revised because it incorporates the insurance amounts by reference to the Commission's insurance rules and regulations in the *Code of Federal Regulations*. Because the bond itself is filed with the Commission, new surety bonds must be executed and filed with the Commission by August 1, 1981, 12:01 a.m. (standard time at the address of the motor carrier principal stated in each surety bond) to provide protection for the public in increased amounts at least at the proposed basic single limit of $500,000. However, the bond must provide protection at the required higher limits if the carrier is engaged in or intends to conduct operations requiring insurance in a one million dollar ($1,000,000) amount.

(Sec. 215, 49 Stat. 557, as amended; 49 U.S.C. 315)

[32 FR 20032, Dec. 20, 1967, as amended at 39 FR 10254, Mar. 19, 1974; 41 FR 10910, Mar. 15, 1976; 46 FR 33277, June 29, 1981; 46 FR 38486, July 27, 1981]

EFFECTIVE DATE NOTE: At 46 FR 33277, June 29, 1981, § 1043.2(a) was revised. The provisions of § 1043.2(a) were stayed by a document published at 46 FR 38486, July 27, 1981 until further notice. For the convenience of the user, the revised paragraph (a) is set forth as follows:

§ 1043.2 Insurance, minimum amounts.

* * * * *

(a) *Motor carriers: bodily injury liability and property damage liability.* (1) The liability amounts for freight vehicles with gross vehicle weight ratings of 10,000 pounds or more are those prescribed under Bureau of Motor Carrier Safety Docket No. MC-94, codified as 49 CFR Part 387, and set forth as follows:

Kind of equipment	Commodity transported	Single limit requirement	
		July 1, 1981	July 1, 1983
Freight vehicles of 10,000 lb or more GVW.	(1) Property (nonhazardous)	$500,000	$750,000
	(2) Hazardous substances, as defined in 49 CFR 171.8 and designated by the letter E in the first column of the Hazardous Materials Table found at 49 CFR 172.101, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquefied compressed gas, compressed gas, or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000
	(3) Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above.	500,000	1,000,000

(2) The liability amounts for freight vehicles with gross vehicle weight ratings of less than 10,000 pounds and for all passenger vehicles are as follows:

(1) Kind of equipment	(2) Limit for bodily injuries to or death of one person	(3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $100,000 for bodily injuries to or death of one person)	(4) Limit for loss or damage in any one accident to property of others (excluding cargo)
Freight vehicles under 10,000 lb GVW	$100,000	$300,000	$50,000
Passengers equipment (seating capacity): 12 passengers or less	100,000	300,000	50,000
More than 12 passengers	100,000	500,000	50,000

§ 1043.3 Combination vehicles.

The following combinations will be regarded as one motor vehicle for purposes of this part, (a) a tractor and trailer or semitrailer when the tractor is engaged solely in drawing the trailer or semitrailer, and (b) a truck and trailer when both together bear a single load.

§ 1043.4 Broker surety bond.

In order to conduct operations as a broker, the broker shall furnish a surety bond approved by the Commission. The Commission will not issue a broker license until an approved surety bond is in effect. The broker license shall remain in effect only as long as a surety bond remains in effect. The surety bond shall ensure the financial responsibility of the broker for the supplying of transportation.

(a) A property broker must have a surety bond in effect for $10,000.

(b) A passenger broker must have a surety bond in effect for $5,000.

(49 U.S.C. 10101, 10321, 10921, 10924, 10925, and 10927; 5 U.S.C. 522, 553, 558, and 559)

[44 FR 53513, Sept. 14, 1979, as amended at 44 FR 70175, Dec. 6, 1979]

EFFECTIVE DATE NOTE: At 44 FR 70175, Dec. 6, 1979, the surety bond requirement in § 1043.4(b) was raised from $5,000 to $10,000. A document published at 45 FR 12796, Feb. 27, 1980, stayed this increase until further notice.

§ 1043.5 Qualifications.

(a) *As a self-insurer.* The Commission will give consideration to and will approve the application of a motor carrier to qualify as a self-insurer if such carrier furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such motor carrier to satisfy its obligations for bodily injury liability, property damage liability, or cargo liability without affecting the stability or permanency of the business of such motor carrier.

(b) *Other securities or agreements.* The Commission will also consider applications for approval of other securities or agreements and will approve any such applications if satisfied that the security or agreement offered will afford the security for the protection of the public contemplated by sections 211(c) and 215 of Part II, Interstate Commerce Act.

§ 1043.6 Bonds and certificates of insurance.

Each certificate of insurance or surety bond filed with the Commission must be for the full limits of liability required under these sections: *Provided,* That only corporations or companies approved by the Commission may qualify to act as surety.

§ 1043.7 Forms and procedure.

(a) *Forms of endorsements, cancellation notices, etc.* Endorsements for policies of insurance, and surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed and approved by the Commission. Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided,

except that in special or unusual circumstances special permission may be obtained for filing certificates of insurance or surety bonds covering periods of less than twelve months duration.

(b) *Filing of certificates of insurance and cancellation notices, etc.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Name of insured.* Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership all partners shall be named.

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until after thirty (30) days' notice in writing by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, has first been given to the Commission at its office in Washington, D.C., which period of thirty (30) days shall commence to run from the date such notice is actually received at the office of the Commission.

(e) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the Commission under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, provided the said replacement certificate, bond or other security is acceptable to the Commission under the rules and regulations in this part.

[32 FR 20032, Dec. 20, 1967, as amended at 35 FR 2830, Feb. 11, 1970]

§ 1043.8 Insurance and surety companies; authorized.

(a) *State authority and designation of agent.* No certificate of insurance or surety bond will be accepted by the Commission under these sections unless written or issued by an insurance or surety company legally authorized to issue policies of the type indicated by such certificate or surety bond, as the case may be, in each State in which the motor carrier is authorized to operate under Part II of the Interstate Commerce Act and such company fully complies with paragraph (b) of this section: *Provided, however,* That in lieu of the licensing requirement with respect to any State except that in which the motor carrier has its principal place of business or domicile, the company will file with the Commission an agreement stating that with respect to any State requested it will furnish the Commission a designation in writing of the name and address of a person upon whom process issued by or under the authority of any court having jurisdiction of the subject matter may be served in any proceeding at law or equity brought in such State against such company. Such agreement shall be effective so long as the company is authorized to file security with the Commission, and thereafter with respect to any claims arising during the effectiveness of any previously filed certificates or surety bonds.

(b) *Financial resources.* Each insurance and surety company must possess and maintain surplus funds (policyholders' surplus) of not less than $1 million, which minimum will be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where, in the judgment of the Commission, additional evidence with respect to such values is considered necessary: *Provided, however,* That this paragraph shall be effective December 31, 1970, as respects insurance and surety companies which are, on December 31, 1967, authorized to file certificates of insurance and surety bonds with the Commission.

§ 1043.9 Refusal to accept, or revocation by Commission of surety bond, etc.

The Commission may, at time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements if, in its judgment such security does not comply with these sections or for any reason fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of any certificate of insurance, surety bond or other security shall not relieve the motor carrier from compliance with § 1043.1(d).

§ 1043.10 Fiduciaries.

(a) *Insured and principal defined.* The terms "insured" and "principal" as used in certificates of insurance, surety bonds and notices of cancellation filed by or in behalf of motor carriers under these sections shall be construed to include not only the motor carrier named in the certificate, surety bond or notice of cancellation, but also the fiduciary of such motor carrier as defined in § 1132.3 of this chapter—Transfers of Operating Rights. The coverage of fiduciaries herein provided for shall attach at the moment of succession of such fiduciaries.

(b) *Insurance coverage in behalf of fiduciaries to apply concurrently.* The coverage furnished under the provisions of this section on behalf of fiduciaries shall not apply subsequent to the effective date of other insurance, or other security, filed with and approved by the Commission in behalf of such fiduciaries. After the coverage provided in this section shall have been in effect thirty (30) days, it may be cancelled or withdrawn within the succeeding period of thirty (30) days by the insurer, the insured, the surety, or the principal upon ten (10) days' notice in writing to the Commission at its office in Washington, D.C., which period of ten (10) days shall commence to run from the date such notice is actually received by the Commission. After such coverage has been in effect for a total of sixty (60) days, it may be cancelled or withdrawn only in accordance with § 1043.7.

§ 1043.11 Operations in foreign commerce.

No motor carrier may operate in the United States in the course of transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country unless and until there shall have been filed with and accepted by the Commission a certificate of insurance, surety bond, proof of qualifications as a self-insurer, or other securities or agreements in the amount prescribed in § 1043.2(a), conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place in the United States, or for loss of or damage to property of others. The security for the protection of the public required by this section shall be maintained in effect at all times and shall be subject to the provisions of §§ 1043.5, 1043.6, 1043.7, 1043.8, 1043.9 and 1043.10; *Provided,* That the requirements of § 1043.8(a) shall be satisfied if the insurance or surety company, in addition to having been approved by this Commission, is legally authorized to issue policies or surety bonds in at least one of the States in the United States, or one of the Provinces in Canada, and has filed with this Commission the name and address of a person upon whom legal process may be served in each State in or through which the motor carrier operates. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond; and *Provided further,* That the term "motor carrier" as used in this section shall not include private carriers or carriers operating under the partial exemption from regulation in sections 202(c) or 203(b) of the Inter-

state Commerce Act (49 U.S.C. 302(c) and 303(b)).

PART 1044—DESIGNATION OF PROCESS AGENTS BY MOTOR CARRIERS AND BROKERS

Sec.
1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

AUTHORITY: Secs. 204, 221, 49 Stat. 546, 563, as amended; 49 U.S.C. 304, 321.

SOURCE: 32 FR 20034, Dec. 20, 1967, unless otherwise noted.

§ 1044.1 Applicability.

Every motor carrier and broker in complying with the requirements of section 221(c) of the Interstate Commerce Act (49 U.S.C. 321(c)), relating to the filing of designations of persons upon whom court process may be served, shall observe the regulations prescribed in this part. The terms motor carrier and broker as used herein shall be construed to include any fiduciary of such motor carrier or broker as defined in § 1132.6 of this chapter—Transfers of Operating Rights. The inclusion of such fiduciary shall attach at the moment of succession of such fiduciary.

[33 FR 18626, Dec. 17, 1968]

§ 1044.2 Form of designation.

Designations shall be made by use of the form prescribed by the Commission for that purpose. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker in its files at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined in section 203(a)(1) of the Interstate Commerce Act) designated must have residence in, or maintain an office in, the state for which they are designated. If an official of a State is designated, evidence of his willingness to accept service of process on behalf of the motor carrier or broker must be furnished.

§ 1044.4 Required States.

(a) *Motor Carriers.* Every motor carrier shall make a designation for each State in which it is authorized to operate by a certificate or permit or by a grant of temporary authority, including States traversed in the course of such operations. Every motor common carrier operating within a single State under the provisions of the second proviso of section 206(a)(1) of the Act (49 U.S.C. 306(a)(1)) shall file a designation for that State. Every motor carrier (including private carriers) performing operations in the United States in the course of transportation between points in a foreign country or foreign countries shall file a designation for each State through which it operates in performing such transportation. Every common carrier of passengers entitled to transport chartered parties by reason of section 208(c) of the act (49 U.S.C. 308(c)) and the regulations thereunder in Part 1054 of this chapter shall also make a designation for each State to which it holds out in its published tariffs to transport chartered parties, including States traversed in the course of such operations.

(b) *Brokers.* Every broker shall make a designation for each State in which is located a point or points at which it is specifically authorized to engage in broker operations. Where a broker's license does not specify such a point or points, designations shall be made for each State in which the broker engages in operations.

§ 1044.5 Blanket designations.

(a) Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by reference to such a list, using the place of individual designations the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by ————————————————————

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including States traversed in the course of such operations, except those States for which individual designations are named.

(b) For regular-route common carriers of passengers, this is deemed to include states to which it holds out in its published tariffs to transport chartered parties, and those traversed in the course of such operations.

§ 1044.6 Cancellation or change.

(a) Designations may be canceled or changed only by a new designation filed in accordance with this part by the motor carrier or broker which made the designation being canceled or changed, except that where a motor carrier or broker ceases to be subject to § 1044.4 in whole or in part for a period of one year, such motor carrier or broker thereafter may cancel, without making other designations, such designations as are no longer required by § 1044.4.

(b) Upon filing a new designation, the prescribed form must be used and completed to show all states for which designations are necessary.

PART 1045—BROKERS OF PROPERTY

Sec.

1045.1 Applicability.
1045.2 Definitions.
1045.3 Records to be kept by brokers.
1045.4—1045.6 [Reserved]
1045.7 Misrepresentation.
1045.8 [Reserved]
1045.9 Rebating and compensation.
1045.10 Duties and obligations of brokers.
1045.11 Transfer of property broker licenses; change in control of corporations and associations holding broker licenses; petitions for reconsideration.
1045.12 [Reserved]
1045.13 Accounting.

AUTHORITY: 49 Stat. 544, as amended, 546, as amended, 554, as amended; 49 U.S.C. 303, 304, 311; 49 U.S.C. 10321; 5 U.S.C. 553.

SOURCE: 32 FR 20034, Dec. 20, 1967, unless otherwise noted.

§ 1045.1 Applicability.

This part applies, to the extent provided therein, to all brokers of transportation by motor vehicle as defined in § 1045.2.

§ 1045.2 Definitions.

(a) "Broker" means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) "Bona fide agents" are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

(c) "Brokerage" or "brokerage service" is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) "Non-brokerage service" is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

[45 FR 68942, Oct. 17, 1980]

§ 1045.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. The record shall show:

(1) The name and address of the consignor;

(2) The name, address, and lead MC-number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

(5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and

(6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

For purposes of this subsection, brokers may keep master lists of consignors and the address and lead docket number of the carrier, rather than repeating this information for each transaction.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

[45 FR 68943, Oct. 17, 1980]

§ 1045.4—1045.6 [Reserved]

§ 1045.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its license is issued.

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

[45 FR 68943, Oct. 17, 1980]

§ 1045.8 [Reserved]

§ 1045.9 Rebating and compensation.

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

(1) The broker owns or has a material beneficial interest in the shipment or

(2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

[45 FR 68943, Oct. 17, 1980]

§ 1045.10 Duties and obligations of brokers.

Where the broker acts on behalf of a person bound by law or a Commission regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

[45 FR 68943, Oct. 17, 1980]

§ 1045.11 Transfer of property broker licenses; change in control of corporations and associations holding broker licenses; petitions for reconsideration.

(a) In order to transfer a property broker license, a transferee must file with the Commission an application for approval of the transfer. The application must contain proof that the transferee is fit, willing, and able to perform the duties of a broker and that the transfer will not be contrary to the public interest.

(b) If there is a change in the control of a corporation or association which holds a broker license, an application must be filed with the Commission describing the change and offering proof that the change is not contrary to the public interest.

(c) The rules that govern the form and manner of filing of applications, the notice that must be given to the public, and the manner of filing protests are the same as those which apply to the transfer of operating rights (see 49 CFR 1100.225).

(d) Rules governing petitions for reconsideration of a decision under this subsection will be governed by the rules contained in 49 CFR 1132.4 and 1100.225.

[45 FR 68943, Oct. 17, 1980]

§ 1045.12 [Reserved]

§ 1045.13 Accounting.

Each broker who engages in any other business shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common shall be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

[45 FR 68943, Oct. 17, 1980]

PART 1045B—PASSENGER BROKER LICENSING

§ 1045B.1 Special procedures governing applications to become a passenger broker.

(a) *Scope.* These rules are used to make application to become a passenger broker. The authority granted under these rules allows the arranging

of interstate motorcoach transportation of passengers and their baggage, for compensation, between all points in the United States.

(1) *Term of license.* If the application is granted, applicant will initially receive a 3-year limited term license. Applicant may later apply for a permanent license. This will be applicant's responsibility, and the Commission will not issue notice that a limited-term license is nearing expiration.

(b) *Application procedures.* (1) *Application form.* There is no application form. Simply put the necessary information in a letter-application.

(2) *Where to send it.* Address it to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. Send an original and one copy of all material to the Commission.

(3) *Notarization.* The information in the letter must be sworn to (notarized). The notarization must show that the applicant has read the material being submitted, has knowledge of the facts in the letter, and knows they are true. See 49 CFR Part 1100, Appendix B, No. 6, for an example.

(4) *Fee.* The fee is as listed at 49 CFR 1002.2(d)(9).

(c) *Information needed.* Write in bold letters on the top of the first page of the letter-application letter "Special Passenger Broker Application." If you hold a broker license, list the MC number on the first page.

(1) *The caption summary.* The caption summary is prepared by the applicant. It will be published in the FEDERAL REGISTER to give the public an opportunity to make comments on whether applicant, or applicant's company, is fit to perform a brokerage service. The caption summary must be submitted in the manner set forth below. Fill in the blanks with the appropriate information. If the particular question is not applicable, write n/a in the space. If there is no business address, give personal residence. Addresses should contain, unless otherwise specified, the street, city, and State. List all addresses, if more than one.

CAPTION SUMMARY

Applicant's name is———. The name under which operations will be performed is———.

Applicant is represented by———in this proceeding (applicant may represent itself), whose address is———.

Following are the name and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles:———.

The broker operations will be managed by——— whose business address is———.

Operations will be conducted at——— (list city, State for broker and all agency locations).

(2) *Other information.* Applicant must submit a statement that it has read and is familiar with the Commission's passenger broker regulations. They are set forth at 49 CFR Part 1046. Applicant must also submit a current balance sheet and income statment.

(3) *Errors in caption summary.* If applicant finds an error in the caption summary published in the FEDERAL REGISTER, it must inform the Commission within 30 days of the publication.

(d) *Processing.* (1) *Incomplete applications.* If incomplete, an application will be returned with a notation as to why it was rejected. A complete application may be refiled at any time.

(2) *Opposed applications.* An application may be opposed only on the basis that that applicant (and business associates) are not fit to conduct the operations. Once a complete and properly submitted request for authority has been filed, the Commission will publish a notice (the caption summary) in the FEDERAL REGISTER. Any person may file a sworn statement in opposition with the Commission, with one copy, within 30 days of the FEDERAL REGISTER publication. The statement in opposition must contain all the material the protesting party plans to submit. It must be served upon applicant's representative, and shall certify that it has been served upon applicant's representative.

(3) [Reserved]

(4) *Reply.* Applicant may reply to this opposition statement. Replies are due within 20 days from the date the opposition statement is due. An origi-

nal and one copy must be served upon the Commission, and one copy must be served upon the protesting party's representative. The reply shall certify that it has been served upon the protesting party's representative.

(5) *Decision process.* In an opposed case, after the reply, if any, is received, the record will be examined to see if additional evidence is necessary. If none is necessary, the case will be assigned to a Review Board for disposition under the modified procedure. If no opposition is received, and Commission examination does not reveal fitness objections, applicant will be granted appropriate authority.

(6) *Grants of authority.* The applicant will be sent a notice if it receives a grant of authority. This notice will inform applicant that it has 90 days to comply with the (i) surety bond and (ii) service of process designation requirements set forth below. The surety bond or service of process information shall not be sent until specifically requested.

(e) *Compliance.* After the grant of authority, applicant must submit a properly completed surety bond form (Form BMC-84) and service of process designation form (Form BOC-3). Send it to the Office of the Secretary. Contact the Commission's Bureau of Operations, Section of Motor, Water, and Forwarder Operations for assistance.

(1) *Form BOC-3.* Information must be provided on the form for each State in which the applicant or its agents will have an office or write contracts. If the operation will be from offices in one State, the applicant may designate itself to receive service of process in that State.

(2) *Form BOC-84.* Submit two copies of this form. Applicant and its insurance agent should request the surety company to complete the forms and return them to applicant. Send the forms to Bureau of Operations, Section of Motor, Water, Forwarder Operations (same Commission address as above). The company which furnishes the bond must be one that has been approved by the Commission. Most major companies that write surety bonds have this approval. Check with the Section of Motor, Water, and Forwarder Operations for acceptability. A surety bond must be kept in force at all times, or a broker's license will be suspended or revoked.

(3) *Commencement of operations.* The Commission will issue a 3-year limited-term license once compliance has been completed. When the license is received, operations may begin.

(f) *Limited term licenses.* Applicants successfully completing this procedure for the first time will be granted a limited term license. It will expire 3 years from the date of issuance, unless application is made for a permanent license. The Commission will not individually notify anyone that the license is expiring and that application for a permanent license should be made.

(1) *When to apply for a permanent license.* The permanent license shall be applied for in the period 120 days before the 3-year term license is to expire. Applications received more than 120 days before the term expiration date will be rejected. Applications *received* (not date of mailing), after the term license has expired shall be treated as first time limited term applications.

(2) *Operations performed during the time of application for a permanent license.* If the application for a permanent license is received during the proper 120-day period, the broker may operate under its term license until final disposition of the permanent application. If the term license is allowed to expire before the permanent application is made, broker operations must cease until a new term license is granted.

(3) *What the permanent license application shall contain.* The permanent license application shall contain the information asked for in the term license application, except that the broker shall also indicate its term license number and indicate that it is now making a permanent application. The processing of the permanent application will correspond to the term license procedures. There will be no fee required for the second application.

(4) *Further investigation.* Authority received under this procedure is specifically conditioned upon the Commission's investigation of passenger broker entry control to commence

within 3 years of the effective date of these rules. The Commission reserves the right to suspend or terminate these procedures at any time.

(g) *Office locations in licenses.* Licenses issued under this procedure shall list the office locations contained in the caption summary. Operations by the broker or its agents may be conducted only at these locations. If a broker wishes to change office locations, it must first inform the Office of Proceedings, Interstate Commerce Commission, Washington, D.C. in writing. No fee for this service is required. If an office in being opened in a State not listed in the old license, the broker must also send an updated Form BOC-3. Operations at the new location may be conducted when the modified license is received.

(49 U.S.C. 10101, 10321, 10921, 10924, 10925, and 10927, and 5 U.S.C. 552, 553, 558, and 559)

[44 FR 70174, Dec. 6, 1979]

EFFECTIVE DATE NOTE: The provisions of Part 1045B were stayed until further notice at 45 FR 12796, Feb. 27, 1980.

PART 1046—BROKERS OF PASSENGER TRANSPORTATION

Sec.

1046.1 Information required to be recorded.
1046.2 Information to be furnished to passengers.

EFFECTIVE DATE NOTE: The provisions of Part 1046, revised at 44 FR 70175, Dec. 6, 1979, were stayed until further notice at 45 FR 12796, Feb. 27, 1980. The text presently in effect is set forth following this part.

§ 1046.1 Information required to be recorded.

Every passenger broker subject to 49 U.S.C. 10924 shall be required to keep a record of all passenger broker transactions, showing: (a) Origin and destination for each ticket sold, (b) name and address of the carrier for which the ticket is sold, (c) the amount received from the passenger, including, stated separately, amounts received for baggage or accessorial services, (d) payments made to each motor carrier served by the broker, and (e) amounts of the commissions earned by the brokers from the sale of transportation for each carrier.

(49 U.S.C. 10101, 10321, 10921, 10924, 10925, and 10927, and 5 U.S.C. 552, 553, 558, and 559)

[44 FR 70175, Dec. 6, 1979]

§ 1046.2 Information to be furnished to passengers.

The following information shall be provided to each passenger in any written contract or service agreement entered into between the broker and the passenger, or in a separate written notice to each passenger in the event there is no written contract or service agreement:

The persons selling this service are governed by regulations of the interstate commerce commission under license No. MC ———. Any complaints about transportation services provided may be directed to Bureau of Operations, Interstate Commerce Commission, Washington, D.C. 20423. Complaints about hotel accommodations and other non-transportation services are outside the Commission's jurisdiction.

(49 U.S.C. 10101, 10321, 10921, 10924, 10925, and 10927, and 5 U.S.C. 552, 553, 558, and 559)

[44 FR 70175, Dec. 6, 1979]

EFFECTIVE DATE NOTE: Part 1046 was revised at 44 FR 70175, Dec. 6, 1979, and stayed until further notice by a document published at 45 FR 12796, Feb. 27, 1980. The text presently in effect is set forth below:

PART 1046—BROKERS OF PASSENGER TRANSPORATION

§ 1046.300 Information required to be recorded.

Every passenger broker subject to section 211 of the Interstate Commerce Act shall maintain and keep an exact record of all transactions in which it or he has participated as such broker, which records shall show: (a) The points of origin and destination for each ticket sold, (b) the name and address of the motor carrier for which it is sold, (c) the amount received from the passenger, including any amounts, stated separately, for the transportation of baggage, or any other service accessorial to the transportation of the passenger, (d) the payments made

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to each carrier by motor vehicle served by the broker and (e) the amounts of the commissions earned by the broker from the sale of transportation for each carrier.

(49 Stat. 546, as amended, 554, as amended: 49 U.S.C. 304, 311)

[32 FR 20036, Dec. 20, 1967]

PART 1047—EXEMPTIONS

Sec.

1047.1 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.
1047.2 Motor vehicles employed solely in transporting school children and teachers to or from school.
1047.10 Interstate operations by motor common carriers within a single State.

TRANSPORTATION AND NOTICE THEREOF BY AGRICULTURAL COOPERATIVE ASSOCIATIONS

1047.20 Definitions.
1047.21 Computation of tonnage allowable in nonfarm-non-member transportation.
1047.22 Nonmember transportation limitation and record keeping.
1047.23 Notice to the Commission.

PARTIAL EXEMPTION FOR AGRICULTURAL COMMODITIES, LIVESTOCK AND FISH

1047.25 Status of selected agricultural commodities, livestock and fish under 49 U.S.C. 303(b)(6) and Administrative Ruling No. 119.

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PROPERTY AND PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

1047.45 Motor transportation of passengers incidental to transportation by aircraft.

AUTHORITY: 49 Stat. 544, as amended, 546, as amended; 49 U.S.C. 303, 304, unless otherwise noted.

SOURCE: 32 FR 20036, Dec. 20, 1967, unless otherwise noted.

§ 1047.1 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.

The partial exemption from regulation under the provisions of Part II of the Interstate Commerce Act of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in section 203(b)(9) of the act be, and it is hereby, removed to the extent necessary to make applicable all provisions of Part II of the act to such transportation when sold or offered for sale, or provided or procured or furnished or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business.

§ 1047.2 Motor vehicles employed solely in transporting school children and teachers to or from school.

The exemption set forth in section 203(b)(1) of the act shall not be construed as being inapplicable to motor vehicles being used at the time of operation in the transportation of schoolchildren and teachers to or from school, even though such motor vehicles are employed at other times in transportation beyond the scope of the exemption.

[36 FR 9022, May 18, 1971]

§ 1047.10 Interstate operations by motor common carriers within a single State.

Every common carrier by motor vehicle who proposes to engage in any operations in interstate or foreign commerce under the provisions of section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, shall, prior to commencing such operations, (1) obtain from the Interstate Commerce Commission an appropriate Certificate of Registration covering the proposed operations, and (2) comply with the provisions of sections 215, 217, and 221(c) of the said Act and the Commission's requirements and rules and regulations thereunder pertaining to the filing of proper evidence of security for the protection of the public, to the filing and posting of appropriate tariff or tariffs, and to the designation of agents for service of process. Any such common carrier by motor vehicle who proposes to engage in any operations in interstate or foreign commerce under section 206(a)(6) of said Act, other than one seeking to obtain a Certificate of Registration by transfer, shall, in order to obtain a

Certificate of Registration covering such operations, file with the Interstate Commerce Commission, Washington, D.C. 20423, an Application for Motor Carrier Certificate of Registration, which application shall be in the form, contain the information, and be served in the manner called for in Form OP-OR 100 (§ 1003.1 of this chapter.)

(49 Stat. 551, as amended; 49 U.S.C. 306)

[32 FR 20036, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

Transportation and Notice Thereof by Agricultural Cooperative Associations

Source: Sections 1047.20 through 1047.23 appear at 43 FR 2397, Jan. 17, 1978, unless otherwise noted.

§ 1047.20 Definitions.

As used in the regulations in this par., the following terms shall have the meaning shown:

(a) *Cooperative Association.* (No change until last paragraph which is revised as follows:) Associations which do not conform to such definition are not eligible to operate under the partial exemption of 49 U.S.C. 10526(a)(5);

(b) *Federation of cooperative associations.* (No change until last sentence which is revised as follows:) Federations of cooperative associations which do not conform to such definition are not eligible to operate under the partial exemption of 49 U.S.C. 10526(a)(5).

(c) *Member.* The term "member" means any farmer or cooperative association which has consented to be, has been accepted as, and is a member in good standing in accordance with the constitution, bylaws, or rules of the cooperative association or federation of cooperative associations.

(d) *Farmer.* The term "farmer" means any individual, partnership, corporation, or other business entity to the extent engaged in farming operations either as a producer of agricultural commodities or as a farm owner.

(e) *Interstate transportation.* The term "interstate transportation" means transportation by motor vehicle in interstate or foreign commerce subject to the Commission's jurisdiction as set forth in 49 U.S.C. 10521.

(f) *Member transportation.* The term "member transportation" means transportation performed by a cooperative association or federation of cooperative associations for itself or for its members, but does not include transportation performed in furtherance of the nonfarm business of such members.

(g) *Nonmember transportation.* The term "nonmember transportation" means transportation performed by a cooperative association or federation of cooperative associations other than member transportation as defined in paragraph (f) of this section.

(h) *Fiscal year.* The term "fiscal year" means the annual accounting period adopted by the cooperative association or federation of cooperative associations for Federal income tax reporting purposes.

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980]

§ 1047.21 Computation of tonnage allowable in nonfarm-non-member transportation.

Interstate transportation performed by a cooperative association or federation of cooperative associations for nonmembers who are not farmers, cooperative associations, or federations of associations or the United States Government for compensation, (except transportation otherwise exempt under Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code) shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance. It shall in no event exceed 25 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage. A cooperative association or federation of cooperative associations may transport its own property, it members' property, property of other farmers and the property of other cooperatives or federations in accordance with existing law, except where the provisions of § 1047.22 may be applicable to the limit on member/nonmember transportation.

(a) The phrase "incidental to its primary transportation operation and necessary for its effective performance" means that the interstate transportation of the cooperative association or federation of cooperation association for nonmembers as described above is performed with the same trucks or tractors employed in a prior or subsequent trip in the primary transportation operation of the cooperative association or federation, that it is not economically feasible to operate the trucks or tractors empty on return trips (outbound trips in cases where the primary transportation operation is inbound to the association or federation), and that the additional income obtained from such transportation is necessary to make the primary transportation operation financially practicable. Transportation for nonmembers as described above performed by a cooperative or federation through the use of trucks or tractors trip-leased for one-way movements with the cooperative association or federation acting as leasee, is not incidental and necessary;

(b) The base tonnage to which the 25-percent limitation is applied is all tonnage of all kinds transported by the cooperative association or federation of cooperative associations in interstate or foreign commerce, whether for itself, its members or nonmembers, for or on behalf of the United States or any agency or instrumentality thereof, and that performed within the exemption provided by 49 U.S.C. 10526(a)(5).

[43 FR 2397, Jan. 17, 1978, as amended at 43 FR 21894, May 22, 1978; 45 FR 45524, July 3, 1980]

§ 1047.22 Nonmember transportation limitation and record keeping.

(a) *Overall limitation of nonmember transportation.* No cooperative association or federation of cooperative associations which is required to give notice to the Commission under § 1047.23 may engage in nonmember interstate transportation for compensation in any fiscal year which, measured in terms of tonnage, exceeds its total interstate member transportation in such fiscal year.

(b) *Records of interstate transportation when nonmember transportation is performed.* Any cooperative association or federation of cooperative associations performing interstate transportation for nonmembers and required to give notice to this Commission under § 1047.23 shall prepare and retain for a period of at least two years written records of all interstate transportation performed for members and nonmembers. These records shall contain (1) the date of the shipment, (2) the names and addresses of the consignor and consignee, (3) the origin and destination of the shipment, (4) a description of the articles in the shipment, (5) the weight or volume of the shipment, (6) a description of the equipment used either by unit number or license number and, in the event this equipment is nonowned, the name and address of its owners and drivers, (7) the total charges collected, (8) a copy of all leases executed by the cooperative association or federation of cooperative associations to obtain equipment to perform transportation under 49 U.S.C. 10526(a)(5), (9) whether the transportation performed is (i) member transportation, (ii) nonmember transportation for nonmembers who are farmers, cooperative associations, or federations thereof, (iii) other nonmember transportation, and if of class (iii), how the transportation was incidental and necessary as defined in § 1047.21(a).

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980]

§ 1047.23 Notice to the Commission.

A cooperative association or federation of cooperative associations which performs or proposes to perform interstate transportation for nonmembers, who are not farmers, cooperative associations, or federations of cooperative associations, under 49 U.S.C. 10526(a)(5) and (c) (which transportation is not otherwise exempt under Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code) shall notify the Commission of its intent to perform transportation. Notification shall be given prior to the commencement of operations and shall be in the form,

contain the information, and be served in the manner called for in Form BOp 102. Notice must be filed with the Commission annually, within 30 days of its annual meeting. Following the receipt of a properly completed Form BOp 102, the information will be published in the FEDERAL REGISTER and put in a central file at the Commission, as public notice of the intent of the agricultural cooperative association or federation of cooperative associations to conduct interstate for-hire transportation for nonmembers under 49 U.S.C. 10526(a)(5). The information requested is of a continuing nature, and any changes in the information concerning officers, directors, and location of transportation records in the notice on file shall be brought to the Commission's attention by the filing of a supplemental form BOp 102 within 30 days of the change. Forms which are incomplete or not properly notarized will be rejected.

[45 FR 45525, July 3, 1980]

PARTIAL EXEMPTION FOR AGRICULTURAL COMMODITIES, LIVESTOCK AND FISH

§ 1047.25 Status of selected agricultural commodities, livestock and fish under 49 U.S.C. 303(b)(6) and Administrative Ruling No. 119.

Section 203(b)(6) of the Interstate Commerce Act (49 U.S.C. 303(b)(6)), as amended by the Transportation Act of 1958, provides an exemption for motor vehicles used in carrying ordinary livestock, fish, and unmanufactured agricultural commodities. Over the years, there have been numerous Bureau opinions, Commission decisions, and judicial holdings, as well as specific statutory language, defining certain commodities as falling either within or without the exemption. Administrative Ruling 119, which is reproduced below, is the most current compilation:

ADMINISTRATIVE RULING NO. 119, REVISED OCTOBER 1, 1974, SUPPLEMENTS RULINGS NOS. 107 AND 110, SECTION 203(b)(6)

INTERSTATE COMMERCE COMMISSION, BUREAU OF OPERATIONS

The purpose of this ruling is to provide a list showing the status of various commodities under the exemption in Section 203(b)(6) of the Interstate Commerce Act, as amended by the Transportation Act of 1958. The Bureau opinions in this ruling are tentative and informal and made in the absence of pertinent formal decisions by the Commission or the courts.

This composite commodity list is made up from the following sources:

1. Administrative Ruling No. 107 (49 CFR 1047.25) which the Transportation Act of 1958 incorporated into Section 203(b)(6) of the Act, but with certain changes. Listings based on Ruling No. 107 carry the identification: "Law".

2. Administrative Ruling No. 110 which explained the changes in Ruling No. 107 made by the Transportation Act of 1958. Listings taken from Ruling No. 110 carry the identification: "Law-Ruling 110".

3. Commission and court decisions since 1958. These are identified by the designation: "Case No. ———". The title and citation of the decision is shown in the Case List which follows the Commodity List.

4. Informal opinions given by the Bureau of Operations and its predecessor Bureaus in response to inquiries received since 1958. These are identified by the word: "Bureau".

A commodity listed as "Exempt" loses its exempt status whenever it is transported in a vehicle which at the same time is transporting for compensation commodities not within the exemption.

The fact that a particular commodity does not appear in the list does not mean that it is either within or not within the exemption. By analogy it may be possible to form a conclusion as to the status of commodities similar to those listed.

The safety and hours of service regulations of the Federal Highway Administration of the Department of Transportation apply generally to operations conducted under this exemption.

R. D. PFAHLER,
Director.

SECTION 205(b)(6) OF THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT OF 1958

Nothing in this part, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided,* That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used

herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not Exempt": *Provided further, however,* that notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products);

COMPOSITE COMMODITY LIST OF ADMINISTRATIVE RULING NO. 119

Additives. Ruling No. 107 reflects the policy of allowing minor amounts of additives, since such things as vitamins in milk, seasoning or sweetening in foods, coated Christmas trees, ect. are shown as exempt. Informal rule of thumb is that no more than 5 percent non-exempt additives are allowable—Bureau

Advertising matter, in reasonable amounts, transported along with exempt commodities to which it relates, not considered as affecting the exempt nature of shipment—Bureau

Advertising matter, comprising 20-30 cases transported with 500 cases of tulip bulbs—Exempt—Bureau

Alfalfa, see Feeds

Animal fats—not exempt—Law

Animals, see Livestock

Bagged commodities—Placing exempt commodities in bags does not affect their exempt status—Law

Bagging, scrap (worn jute bagging)—Not exempt—Bureau

Bananas—Not exempt—Law-Ruling 110

Bark, see Forest Products

Barley, see Grains

Bees—Exempt—Law

Beeswax, crude, in cakes and slabs—Exempt—Law

Beet pulp, see Feeds

Beets, sugar—Exempt—Law

Berries, See Fruits

Birds:

Canaries and parakeets—Not exempt—Bureau

Edible, see separate heading: Poultry

Feathers, see separate heading: Feathers

Pigeons, racing—Not exempt—Law

Birdseed, see separate heading: Feeds

Bones, animal—Not exempt—Bureau

Bran, see Feeds

Broom corn, threshed and baled—Exempt—Law

Bulbs, see Horticultural Commodities

Butter—Not exempt—Law

Buttermilk—Exempt—Law

Candied apples (fresh apples on a stick dipped in taffy)—Not exempt—Bureau

Casein, derived from milk—Not exempt—Case No. 1

Canned fruits and vegetables—Not exempt—Law

Carnauba wax as imported in slabs or chunks—Not exempt—Law

Castor beans—Exempt—Law

Castor pomace (cake remaining after extraction of oil from castor beans)—Not exempt—Bureau

Cattle, live, see Livestock

Cattle, slaughtered—Not exempt—Law

Charcoal—Not exempt—Law

Cheese—Not exempt—Law

Cheese, cottage—Not exempt—Law

Cheese, cottage, curd, in bulk—Not exempt—Bureau

Cheese, cream—Not exempt—Law

Chicle (a gum obtained from latex of trees) in form normally shipped, i.e. purified and neutralized—Not exempt—Bureau

Christmas trees, plain, sprayed, or coated—Exempt—Law

Cider, apple, and cider vinegar—Not exempt—Bureau

Citrus fruits, see Fruits

Clay—Not exempt—Bureau

Coal—Not exempt—Law

Cocoa bean shells, in any form—Not exempt—Bureau

Cocoa beans—Not exempt—Law-Ruling 110

Coconut, see Nuts

Coffee beans—Not exempt—Law-Ruling 110

Coffee, roasted—Not exempt—Law

Coffee, instant—Not exempt—Law

Compost, composed of manure and straw sweepings, dried, disintegrated, and decomposed—Exempt—Bureau

Compost, mixture of manure, straw or rice hulls, but not sawdust—Exempt—Bureau

Compost, product, a mixture of processed garbage and sewage sludge—Not exempt—Bureau

Compost, mixture of manure and sweepings with water and bacterial agents to hasten fermentation, used as a growth medium for mushrooms—Not exempt—Bureau

Containers, crates, and boxes which have been used in the movement of exempt commodities, which have been reconditioned and sold from stock to new purchasers—Not exempt—Bureau

Containers, crates, and boxes which have been used in the movement of exempt commodities and are being returned for reuse—Exempt—Law

Containers, new, for use in shipping exempt commodities—Not exempt—Law
Copra meal—Not exempt—Law
Corn, See Grain
Corn cobs——Exempt—Law
Corn cobs, ground—Exempt—Law
Corn fodder—Exempt—Law
Cottage cheese, see cheese
Cotton, corded but not spun, woven or knitted—Exempted—Law
Cotton felt, used in mattresses, etc. consisting of scraps of raw cotton, blended and carded, but not otherwise processed—Exempt—Bureau
Cotton, ginned or unginned—Exempt—Law
Cotton lap (baled cotton, blended, cleaned and formed into rolls preparatory to milling)—Exempt—Bureau
Cotton linters—Exempt—Law
Cotton motes (fibers removed from cotton seed after ginning and removal of linters)—Exempt—Bureau
Cotton waste consisting of bits of string, thread, and yarn—Not exempt—Bureau
Cotton waste consisting of scraps of cotton fibre not spun, woven, or knitted—Exempt—Law
Cotton yarn—Not exempt—Law
Cottonseed, whole—Exempt—Law
Cottonseed cake—Not exempt—Law
Cottonseed, dehulled—Exempt—Law
Cottonseed hulls—Exempt—Law
Cottonseed meal—Not exempt—Law
Crates, see Containers
Cream, see Milk
Cream cheese, see Cheese
Dehydrated, see commodity name: Fruits, Vegetables, Eggs, etc.
Diatomaceous earth—Not exempt—Law
Dinners, frozen—Not exempt—Law (But see next two entries)
Dinners, chicken, cooked and frozen—Exempt—Bureau (Based on Case No. 26)
Dinners, seafood, frozen—Exempt—Law—Ruling 110
Dried, see commodity name: Fruits, Vegetables, Eggs, etc.
Eggs:
- Albumen, fresh, liquid—Exempt—Law
- Albumen, fresh, liquid, pasteurized—Exempt—Bureau
- Dried—Exempt—Law
- Frozen—Exempt—Law
- Hard boiled, pickled, packed in vinegar and water with spices—Not exempt—Bureau
- In shell—Exempt—Law
- Liquid, whole or separated—Exempt—Law
- Mixture of 90% powdered and 10% syrup and salt, dried—Not exempt—Bureau
- Oiled—Exempt—Law
- Omelet mix consisting of fresh broken eggs and milk with minute amounts of salt and pepper and seasoning, packaged and frozen—Exempt—Bureau
- Powder, dried—Exempt—Law
- Shelled—Exempt—Law
- Shells, pulverized, for medical use (designated "pure calcium carbonate")—Not exempt—Bureau
- Whites, frozen—Exempt—Bureau
- Whole, with added yolks, dried—Exempt—Bureau
- Whole, frozen with added yolks—Exempt—Bureau
- Whole, frozen, standardized by subtraction of whites—Exempt—Bureau
- Yolks, dried—Exempt—Law
- Yolks, fresh, liquid—Exempt—Law
- Yolks, frozen—Exempt—Bureau
- Yolks, with 10% salt or sugar added—Not exempt—Bureau

Fats, animal—Not exempt—Law
Feathers—Exempt—Law
Feathers, cleaned and ground, not further processed, nothing added (sometimes referred to as "feather meal")—Exempt—Bureau
Feathers, ground, combined with dehydrated poultry offal—Exempt—Bureau
Feeds:
- Alfalfa, dried, chopped, and pressed into cubes and wafers by machine, after dampening with water—Exempt—Bureau
- Alfalfa, dried, etc., as above, but by a steam process—Not exempt—Bureau
- Alfalfa pellets—Not exempt—Law
- Beet pellets—Not exempt—Bureau
- Beet pulp—Not exempt—Law
- Bird gravel—Not exempt—Bureau
- Bird seed, containing milo, millet, wheat chaff, and peanut heart—Exempt—Bureau
- Bird seed bell, seed (millet, wheat, milo, and sunflower seed) mixed with an adhesive such as corn syrup or wood glue, fitted with a wire hanger, and molded into a bell shape, for feeding wild birds—Exempt—Case No. 19
- Bran shorts—Not exempt—Law
- Corn gluten—Not exempt—Law
- Cottonseed products, see separate heading: Cottonseed
- Distilled corn grain residues, with or without solubles added—Not exempt—Law
- Formulas composed of hominy feed, beet pulp, corn gluten, wheat middlings, cane molasses, and minerals—Not exempt—Bureau
- Hamster and gerbil food with 9 percent soybean and alfalfa meal added—Not exempt—Bureau
- Hominy feed—Not exempt—Law
- Meal, see separate heading: Meal
- Middlings—Not exempt—Law
- Oat hulls, ground—Exempt—Law
- Parrot food, mixture of exempt commodities—Exempt—Bureau
- Pelletized ground refuse screenings—Not exempt—Law
- Rice bran—Exempt—Law

Rice hulls, anhydrous ammonia added providing a 10 percent protein source as feed——Not exempt—Bureau
Rice hulls, ground or unground, nothing added—Exempt—Bureau
Rice mill feed pellets—Status pending—Case No. 32
Screenings, feed—Exempt—Law
Soya bean husks—Exempt—Case No. 16
Wheat bran—Not exempt—Law
Wheat mixed feed (mixture of coarse outer covering of wheat kernel, wheat germ, wheat flour, and offal of the tail of the mill——Not exempt—Case No. 2
Fertilizer, commercial—Not exempt—Law
Fibers:
Abaca (manila hemp), piassava, ixtle, rattan, and palm and grass fibers—Exempt—Case No. 3
Clippings resulting from rope making—Not exempt—Bureau
Coir yarn, made from coconut fibre, is manufactured by spinning—Not exempt—Case No. 3
Flax—Exempt—Law
Hemp—Not exempt—Law-Ruling 110
"Hemp" specifically made not exempt by amendment of Section 203(b)(6), means true hemp (cannabis sativa) or its fiber, and does not embrace similar plants or plant fibers commonly referred to by name—Case No. 3
Jute in bales—Exempt—Law
Jute fabric, product of a textile operation—Not exempt—Bureau
Kapok, in loose bales, not processed beyond separation of fibers from seeds—Exempt—Bureau
Palmleaf, not processed beyond separation from leaf, cleaning, combing, drying and baling—Exempt—Bureau
Ramie—Exempt—Law
Ramie Tops, consisting of long fibers of the ramie plant—Exempt—Bureau
Rayon or synthetic fibers, or mixtures thereof (waste materials or otherwise)—Not exempt—Bureau
Sisal, not being a true hemp—Exempt—See explanation under "Hemp" above
Fish (including shell fish):
General. Frozen, quick frozen, and unfrozen fish and shell fish in the various forms in which it is shipped, such as live fish, fish in the round, beheaded, and gutted fish, filletted fish, beheaded shrimp, and oysters, clams, crabs, and lobsters, with or without shells, including crab meat and lobster meat—Exempt—Law
Breaded, cooked, or uncooked, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Cakes, codfish, cooked or uncooked, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Canned, as a treatment for preserving—Not exempt—Ruling 110; Case No. 24
Clam juice or broth, cooked or uncooked, frozen or fresh—Exempt—Ruling 110; Case No. 24
Condensed fish solubles (obtained by condensing the aqueous portion of the residue of pressing oil from fish)—Not exempt—Bureau
Cooked or partially cooked fish or shellfish, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Crab offal (residue after extraction of meat from crabs including shells, dried and ground)—Exempt—Bureau
Crabmeat, pasteurized, placed in hermetically sealed containers for purpose of preservation—Not exempt—Bureau
Crabmeat, pasteurized, sealed for purposes of cleanliness only, preservation accomplished by refrigeration—Exempt—Bureau
Croquettes, salmon, cooked or uncooked, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Deviled crabs, clams, or lobsters, cooked or uncooked, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Dinners, cooked or uncooked, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Fish, processed by cleaning, scaling, and adding a small amount of salt—Exempt—Case No. 4.
Fish, ground, frozen into blocks—Exempt—Bureau
Fish luncheon meat of smoked ground fish formed into loaves—Not exempt—Bureau
Fish, lightly salted or spiced, requiring refrigeration to retard deterioration—Exempt—Bureau
Fried fish fillets, oysters, or scallops, frozen or fresh—Exempt—Law-Ruling 110; Case No. 24
Frogs, live or dressed—Exempt—Law
Frogs and turtles, placed in formaldehyde to prevent or retard deterioration during transportation (but not as a preservative as that term is normally used) and used in substantially the same manner as live specimens—Exempt—Bureau
Frozen, see General above, and individual listings
Hermetically sealed in containers as a treatment for preserving—Not exempt—Law
Hermetically sealed in containers for cleanliness only, preservation attained by refrigeration—Exempt—Law
Meal—Not exempt—Law
Offal (inedible portions of fish not further processed)—Exempt—Law
Oil from fishes—Not exempt—Law
Preserved, or treated for preserving, such as smoked, salted, pickled, spiced, corned, or kippered—Not exempt—Law

Residue remaining after extraction of oil from fish—Not exempt—Bureau
Salmon eggs, brined and packed in salt and formaldehyde solution in vacuum sealed jars—Not exempt—Bureau
Salmon eggs, frozen not pickled or brined or otherwise treated for preservation—Exempt—Bureau
Salted, as a treatment for preserving—Not exempt—Law
Scraps, frozen, granulated, and pressed into blocks, for cat food—Exempt—Bureau
Sea lions and walrus—Not exempt—Bureau
Seafood casseroles and dinners of which fish or shellfish is the principal ingredient—Exempt—Bureau
Seal blubber—Not exempt—Bureau
Seal skins—Not exempt—Bureau
Shells of sea creatures, other than those mixed with other refuse of "offal"—Not exempt—Bureau
Shells, oyster, moving to market for use in button making—Not exempt—Law
Shells, oyster, ground—Not exempt—Case No. 28
Shrimp cocktail (shrimp cooked and placed in glass jars with special sauce and seasoning and kept under refrigeration)—Exempt—Bureau
Soup or chowder containing a relatively small proportion of fish or shellfish in proportion to other ingredients which are not within the exemption—Not exempt—Bureau
Stew, consisting of raw oysters or clams, milk and seasoning, frozen but uncooked—Exempt—Law
Sticks, cooked or uncooked, frozen or fresh—Exempt—Law-Ruling 110
Sticks, frozen, cooked, breaded—Exempt—Bureau
Tuna Pies, frozen—Exempt—Bureau
Turtles, sea or fresh water—Exempt—Law
Whale meat, fresh—Exempt—Law
Flagstone—Not exempt—Law
Flax fiber, see Fibers
Flaxseed, whole—Exempt—Law
Flaxseed meal—Not exempt—Law
Flies, live sterile screwworm, used in screwworm eradication program—Exempt—Bureau
Flour—Not exempt—Law:
Corn flour, extruded and hammered to a flour consistency—Not exempt—Bureau
Corn meal flour—Not exempt—Bureau
Mustard flour, consisting of seeds ground or milled and bolted—Not exempt—Bureau
Tapioca flour, produced in same manner as wheat flour—Not exempt—Bureau
Flowers and flower plants, see Horticultural commodities
Fodder, corn and sorghum—Exempt—Law
Forage, see Hay and Feeds
Forest products:
Bark—Exempt—Law
Bark—Boiled to clean and soften—Exempt—Law
Bark, raw, broken up by means of hammermill, or shredded, ground, or crushed, graded, and bagged—Exempt—Bureau
Bark, shredded in its natural state, sprayed with copper based fungicide—Exempt—Bureau
Blankets of pine and spruce boughs—Exempt—Law
Bolts for making shingles—Exempt—Law
Divi and divi pods, natural products of certain trees, not processed—Exempt—Bureau
Excelsior wood: shredded birch bark, not a by-product of sawing, planing or finishing of wood—Exempt—Bureau
Fence pickets, split by hand from bolts, edged and pointed—Exempt—Bureau
Fence posts and rails, consisting of logs peeled and cut to length, the posts having holes drilled in them for insertion of rails, and the rails being split and sharpened at both ends—Not exempt—Case No. 6
"Firelog": wood shavings, sawdust, low grade petroleum, used in place of firewood—Not exempt—Bureau
Greenery—Exempt—Law
Growing, see separate heading; Horticultural Commodities
Hickory "wheels": short lengths cut from trees or logs—Exempt—Bureau
Hickory meal: sawdust or powdered hickory wood—Not exempt—Bureau
Holly sprigs and cuttings—Exempt—Law
Leaves—Exempt—Law
Leaves, sisal, husks and moisture removed—Exempt—Law
Lignin sulphonate obtained by cooking wood chips in a chemical solution and used as a road binder—Not exempt—Bureau
Logs and pilings impregnated with a preservative, usually creosote——Not exempt—Case No. 7
Mesquite brush, ground, dehydrated and packaged in plastic bags—Exempt—Bureau
Mesquite brush, twigs and debris burned off—Exempt—Law
Mine timbers of cants, comprised of 8 foot lengths of fir, rough-sawn, square corned—Not exempt—Bureau
Mistletoe—Exempt—Law
Myrobalons, as imported in natural state—Exempt—Law
Palmyra stalk fibers (fronds from palm leaves)—Exempt—Law
Peat moss, dried, shredded, baled—Exempt—Law
Peat or peat moss, in bags or boxes—Exempt—Bureau (See also Case No. 31)

Peat moss flower pots impregnated with wetting agent—Not exempt—Bureau
Peat, for use as an organic fertilizer, wet with water and other solutions, decomposed in a pressure vessel and dried—Not exempt—Case No. 31
Peeler cores, composed of the center portions of logs remaining after plywood is cut therefrom—Exempt—Case No. 30
Pilings, wooden, untreated—Exempt—Case No. 9
Pilings, wooden, impregnated with a preservative, usually creosote—Not exempt—Case No. 7
Pine Cones, leaves, and miniature trees preserved by use of a solution containing calcium chloride—Exempt—Case No. 8
Poles, wooden, untreated—Exempt—Case No. 9
Poles, preassorted, preventative-treated (used by utilities companies, contractors, municipalities, etc.)—Not exempt—Case No. 10
Poles, telephone, not creosoted—Exempt—Law
Railroad ties composed of bolts from felled trees sawed crosswise and peeled or split but not otherwise processed—Exempt—Bureau
Railroad ties, lengths of wood cut to length and sawed lengthwise to size—Not exempt—Bureau
Resin, crude—Exempt—Law
Resin products, such as turpentine—Not exempt—Law
Roots, natural or dried—Exempt—Law
Sap, maple—Exempt—Law
Sawdust and shavings, regardless of their place of production, the process by which they are created, or their ultimate use—Not exempt—Case No. 11
Sawdust from lumber mills—Not exempt—Law
Shakes and shingles, whether split by hand or by machine—Not exempt—Case No. 12
Shingle bolts—Exempt—Law
Slabwood produced from sawmill operations—Not exempt—Case No. 13
Spanish moss—Exempt—Law
Sphagnum moss—Exempt—Law
Spices, see separate listing: Spices
Tanbark or tanwood, residue after tanning dye is extracted from bark, roots, or wood by means of extreme pressure and hot water, used as a mulch—Not exempt—Bureau
Tanning extracts (wattle, chestnut, guebracho) produced by leaching bark, clarifying the extract and concentrating it in vacuum evaporators—Not exempt—Bureau
Timber (rough logs or bolts) cut in random lengths, with bark removed—Exempt—Bureau
Trees:
  Christmas, plain, sprayed, or coated—Exempt—Law
  Cut to length, peeled, or split—Exempt—Law
  Growing, see Horticultural commodities
  Sawed into lumber—Not exempt—Law
Trimmings from logs and bolts, except bark—Not exempt—Case No. 11
Valonia, as imported in natural state—Exempt—Law
Wood chips for making wood pulp—Not exempt—Law
Wood cut into short crosswise lengths for firewood (not sawed lengthwise)—Exempt—Bureau
Wreaths of holly or other natural material with small amount of foundation or decorative material—Exempt—Law
Frogs, see Fish
Frozen, see commodity name: Fruits, Vegetables, Fish, Poultry, etc.
Fruits and Berries:
  Apple peels and cores ground, but not otherwise processed—Exempt—Bureau
  Apple pomace (substance remaining after extraction of juice)—Not exempt—Bureau
  Apples, fresh, unfrozen, peeled, cored, sliced and dipped in brine solution to retain freshness—Exempt—Bureau
  Bagged—Exempt—Law
  Bananas, fresh, dried, dehydrated, or frozen—Not exempt—Law-Ruling 110
  Blueberries, incidentally frozen while being maintained in low temperature storage, allowed to thaw during transportation—Exempt—Bureau
  Canned—Not exempt—Law
  Cherries in sulphur dioxide "brine" for purpose of holding them in fresh state until they can be processed for marketing, which processing includes "debrining"—Exempt—Case No. 14
  Cherries, maraschino type, resulting from further processing of cherries mentioned just above—Not exempt—Case No. 14
  Chopped glazed fruit (similar to that used in fruit cakes)—Not exempt—Bureau
  Citrus fruit salad, fresh, chilled—Exempt—Bureau
  Citrus fruit sections, fresh, cold-packed or semi-frozen—Exempt—Law
  Citrus fruit sections, frozen—Not exempt—Law-Ruling 110
  Citrus fruit sections, not frozen, packed with sugar, water, citric acid, and benzoate of soda, additives being 6% to 10% of total—Not exempt—Bureau
  Citrus pulp (substance remaining after juice extraction)—Not exempt—Bureau
  Color added—Exempt—Law
  Cranberries, partially frozen as result of being placed in open boxes in storage under controlled temperatures to insure

freshness pending transportation to canneries—Exempt—Bureau
Cranberries, purposely quick-frozen, maintained in a frozen state during transportation—Not exempt—Bureau
Dates, pitted, dried—Exempt—Law
Dehydrated—Exempt—Law
Dried, naturally or artifically—Exempt—Law
Dried, not further processed, placed in sealed packages or receptacles—Exempt—Bureau
Figs, dried, halved or quartered—Exempt—Law
Figs or dates, ground, in paste form, cooked, or with substantial amounts of other substances added—Not exempt—Bureau
Fig paste, consisting of ground figs, either in their natural state or dried—Exempt—Bureau
Frozen—Not exempt—Law-Ruling 110
Frozen (quick-frozen) for the purpose of preservation during transportation—whether shipped under temperature control or not—Not exempt—Bureau
Fruit baskets or gift packages consisting of fresh fruit with 5% or less of jelly in jars and candy—Exempt—Bureau
Fumigated—Exempt—Law
Graded—Exempt—Law
Grape slurry comprised of grapes removed from stems and crushed—Exempt—Bureau
Hulls of oranges after juice extractions—Not exempt—Law
In brine, to retain freshness—Exempt—Law
Juice, orange or other citrus—Not exempt—Law
Juice, fruit, plain or concentrated—Not exempt—Law
Kernels—Exempt—Law
Myrobalan (prune-like tropical fruit), dried, crushed and bagged—Exempt—Bureau
Oiled apples—Exempt—Law
Olives, processed for table use, in brine or not in brine, stuffed or not stuffed, in any type container—Not exempt—Bureau
Orange and lemon peel, dried, prepared from hulls of fruit following juice extraction—Not exempt—Bureau
Peaches, peeled, pitted, and put in cold storage in unsealed containers—Exempt—Law
Pies, frozen—Not exempt—Law
Plantains (considered to be bananas)—Not exempt—Case No. 15
Preserved, such as jam—Not exempt—Law
Purees, strawberry and other, frozen—Exempt—Law
Quick frozen—Not exempt—Law-Ruling 110
Raisins, seeded or unseeded—Exempt—Law
Raisins, very lightly coated with honey, cinnamon, or sugar—Exempt—Bureau
Raisins, chocolate coated or glaced, thereby preserving and candying them—Not exempt—Bureau
Sliced, frozen—Not exempt—Law-Ruling 110
Strawberries, in syrup and unsealed containers in cold storage—Exempt—Law
Strawberries, in unsealed containers with temperature controlled at 10° or lower—Not exempt—Bureau
Grain:
Artifically dried—Exempt—Law
Barley, brewers' (residuary by-products of the malting process in which barley, steeped and germinated, is mixed with hops and other ingredients and allowed to ferment)—Not exempt—Bureau
Barley, malted (processed only to the extent of soaking in warm water to hasten or induce germination, then drying, and removal of sprouts in some instances)—Exempt—Bureau
Barley, pearled (husked and polished grains)—Exempt—Bureau
Barley, rolled—Exempt—Law
Barley, whole—Exempt—Law
Brewers grains, wet, by-product of brewing process—Not exempt—Bureau
Corn cob pellets consisting of finely ground cobs with graphite added—Not exempt—Bureau
Corn, cracked—Exempt—Law
Corn, from which oil is extracted, ground and dried to comprise a product known as "brewers corn grits"—Not exempt—Bureau
Corn screenings—Exempt—Bureau
Corn shucks, used as "hot tamale shucks"—Exempt—Bureau
Corn, shelled—Exempt—Law
Corn, whole—Exempt—Law
Cracked wheat (bulgur or bulgar) processed by cooking the grains for purification and preservation, then drying, dehulling and grinding—Not exempt—Bureau
Feeds, see separate heading: Feeds
Hulls and husks, see separate heading: Feeds
Milo maize—Exempt—Law
Oats, crimped or rolled in the same manner as rolled barley—Exempt—Bureau
Oats, whole—Exempt—Law
Oats, whole, crushed and ground, in bags—Exempt—Bureau
Oil, extracted from grain—Not exempt—Law
Popcorn, popped—Not exempt—Law
Popcorn, shelled (unpopped) packaged with cooking fat or oil (one part oil to 2½ parts popcorn)—Not exempt—Bureau

Popcorn, shelled (unpopped), weighing ten or more ounces, accompanied by a separate package of seasoning consisting of salt, monosodium glutamate, butter flavor, cottonseed oil, and artificial color and flavor weighing approximately ¾ ounce—Exempt—Bureau
Popcorn, unpopped, shelled, in sealed or unsealed containers—Exempt—Law
Puffed grains—wheat, rice, millet or corn—produced by application of steam inside air tight tubes, and heat from outside burners, although not fully cooked—Not exempt—Bureau
Rice bran—Exempt—Law
Rice, brewers—Exempt—Law
Rice, clean—Exempt—Law
Rice, ground, not sifted, bolted or graded—Exempt—Bureau
Rice, hull ash (burned hulls of threshed rice)—Not exempt—Bureau
Rice, hulled ("brown rice")—Exempt—Bureau
Rice, long grain, enriched, parboiled, subjected to enough steam pressure to harden kernel and reduce stickiness, but not boiled or precooked—Exempt—Bureau
Rice, milled, fortified with vitamins—Exempt—Bureau
Rice polish—Exempt—Law
Rice, precooked—Not exempt—Law
Rice, whole—Exempt—Law
Rye, whole—Exempt—Law
Sorghum grains, whole—Exempt—Law
Wheat, bulgar, cleaned, cooked under steam pressure, dried, dehulled, ground, graded and bagged—Not exempt—Bureau
Wheat germ—Not exempt—Law
Wheat, new, crushed, uncooked—Exempt—Bureau
Wheat, whole—Exempt—Law
Grass sod—Exempt—Law
Gravel—Not exempt—Law
Greenery, see Forest products
Grinding, without prior or subsequent manufacturing processes does not affect the exempt status of the commodity—Law
Guano, bat (excrement of bats, dried, but not further processed)—Exempt—Bureau
Gums, the exudation of trees and shrubs, such as arabic, ghatti and tragacanth, in natural state or dried, sifted, and ground, but not purified, neutralized or refined—Exempt—Bureau
Hair, alpaca, camel, or goat, clipped from animal—Exempt—Law
Hair, hog or other animal, product of slaughter of animal—Not exempt—Law
Hair, rabbit of vicuna (plucked or clipped from live animal)—Exempt—Bureau
Hay and forage, dried naturally or artifically—Exempt—Law
Hay, chopped—Exempt—Law
Hay, dehydrated—Exempt—Law
Hay, salt (from salt marshes)—Exempt—Law
Hay, see also Feeds
Hay, sweetened with 3% molasses by weight—Not exempt—Law
Hemp, see Fibers
Herbs, see Spices
Hides, green and salted—Not exempt—Law
Honey, in the comb or strained—Exempt—Law
Honey, heat treated to retard granulation—Exempt—Law
Hops—Exempt—Law
Horticultural commodities:
Bulbs—Exempt—Law
Flowers, growing or cut—Exempt—Law
Leaves, natural or dried—Exempt—Law
Nursery stock—Exempt—Law
Plants, vegetables and flower—Exempt—Law
Roots, rhubarb, asparagus, mint, etc.—Exempt—Law
Star flowers—dried, spray painted—Exempt—Bureau
Trees, growing, balled in earth—Exempt—Law
Wreaths, holly or other natural material, with small amount of foundation or decorative material—Exempt—Law
Hulls and husks, see Feeds, Nuts
Humus, of a nature similar to peat moss—Exempt—Law
Ice for cooling subsequent shipments of exempt commodities—Exempt—Law
Ice Cream and ice cream mix, see Milk and cream
Imported commodities—Fact of importation does not affect status of otherwise exempt commodities, except that wool imported from any foreign country is not exempt—Law-Ruling 110
Insecticides—Not exempt—Law
Juices, see Fruits
Jute fiber, see Fibers
Kapok, see Fibedrs
Kelp, dried, ground—Exempt—Law
Latex, see Rubber
Leaves, see Forest products, Horticultural commodities, and Spices
Legume inoculant—Not exempt—Bureau
Licorice paste and powder (prepared from ground licorice root, and used in tobacco and confectionary trades and for medicinal purposes)—Not exampt—Bureau
Licorice roots, spent (by-product or residue remaining after open-vat leaching process used to extract licorice)—Not exempt—Bureau
Livestock:
Exhibit animals such as those of 4-H club members, which though shown for a few days, are chiefly valuable for slaughter—Exempt—Law
Laboratory animals, not domesticated, such as rats, mice, guinea pigs—Not exempt—Bureau

Medical use animals, such as ordinary healthy swine for serum manufacture—Exempt—Law
Monkeys—Not exempt—Law
Ordinary, i.e. all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, and other special uses—Exempt—Law
Race horses—Not exempt—Law
Registered or purebred cattle for ordinary farm or ranch uses, not chiefly valuable for breeding, race, show, or other special purposes—Exempt—Law
Riding horses, used for personal pleasure riding—Exempt—Bureau
Rodeo animals (bucking horses, cow ponies, parade horses, pick-up horses, Brahma bulls, steers, calves, buffalo)—Not exempt—Bureau
Show horses—Not exempt—Law
Zoo animals—Not exempt—Law
Limestone, agricultural—Not exempt—Law
Linseed meal, see Meal
Lumber, rough sawed or planed—Not exempt—Law
Manure, in natural state—Exempt—Law
Manure, dried or dehydrated, bagged—Exempt—Law
Manure to which sand is added as conditioning ingredient, equivalent to 3% of the total mixture—Exempt—Bureau
Manure to which is added substantial amounts of biological soil organisms and pulverized granite, fermented and dehydrated—Not exempt—Bureau
Manure, fermented, with additives such as yeast and molds, producing a rich liquor which in water solution is used for soil enrichment—Not exempt—Bureau
Manure, paunch (cud of animal's rumen) product of slaughter—Not exempt—Bureau
Maple sap—Exempt—Law
Maple syrup—Not exempt—Law
Meal, alfalfa—Not exempt—Law
Meal, copra—Not exempt—Law
Meal, cottonseed—Not exempt—Law
Meal, fish—Not exempt—Law
Meal, alfalfa—Not exempt—Law
Meal, linseed—Not exempt—Law
Meal, peanut—Not exempt—Law
Meal, soybean—Not exempt—Law
Meat and meat products:
Beef dinners, frozen—Not exempt—Bureau
Fresh, frozen or canned—Not exempt—Law
Meat pies, frozen—Not exempt—Bureau
Meat of Seals, sea lions and walrus—Not exempt—Bureau
Scrap bones and meat, refuse from packing houses—Not exempt—Bureau
Milk and Cream:
Anhydrous milk fat made by a continuous separation process directly from milk or cream in the same mannter as nonfat dried milk solids--Exempt—Bureau
Butterfat, isex, Gold Label (trade name) consisting of over 50% sugar and 2% water and 44% butterfat—Not exempt—Bureau
Buttermilk—Exempt—Law
Buttermix/condensed cream consisting of 45% butter fat 30% sugar and 25% skimmed milk solids—Not exempt—Bureau
Casein, produced commercially through specialized processes—Not exempt—Case No. 1
Cheese, see that main heading
Concentrate, pasteurized and homogenized, with ⅔ of the water removed—Exempt—Bureau
Concentrate (mixture of fresh cream with skim milk from which a portion of water is removed)—Exempt—Bureau
Concentrate, consisting of fresh whole milk from which a portion of the water is removed to which no substantial amount of non-exempt substance is added—Exempt—Bureau
Condensed—Not exempt—Law
"Culturemate": non-fat dry milk powder, 10% dry phosphate salts, dry process extract, small amounts of dextrose and whey—Not exempt—Case No. 29
Dry milk solids (essentially the same as powdered milk)—Exempt—Case No. 1
Evaporated milk, in sealed cans—Not exempt—Bureau
Frozen—Exempt—Law
Homogenized—Exempt—Law
Ice cream mix (blend of milk, dried skim milk and sugar)—Not exempt—Bureau
Milk "replacer" (blend of 93% ingredients
Lactose: milk sugar, traces of protein and ash, made by condensing sweet cheese whey, crystalizing by cooking, then spinning, drying and bagging—Exempt—Case No. 29
Milk "replacer" containing 10% animal fat—Not exempt—Bureau
Milk "replacer" (blend of 98% ingredients themselves "exempt" commodities and 2% dietary supplements and flavoring ingredients, not otherwise processed)—Exempt—Bureau
Milk "replacer" (Calf Pab), containing at least 20 nonexempt ingredients (no percentages shown)—Not exempt—Bureau
Milk shake mix, composed of powdered milk with substantial amounts of sweetening and flavoring added—Not exempt—Bureau
Pasteurized—Exempt—Law
Powdered—Exempt—Law
Raw—Exempt—Law
Raw milk with coloring added to indicate it has been found unfit for human consumption—Exempt—Bureau
Skim—Exempt—Law

Skim, dried—Exempt—Bureau
Skim, with two-thirds of water removed, in bulk or unsealed containers—Exempt—Law
Standardized—Exempt—Law
Sterilized in hermetically sealed cans—Not exempt—Law
Vitamin "A"—Exempt—Law
Whey, see that main heading
Whipped cream, frozen, containing only exempt dairy products, which is mechanically processed into that form—Exempt—Bureau
Whole milk with moisture content removed and nothing added—Exempt—Bureau
Yoghurt, plain or flavored—Not exempt—Bureau
Milo, see Grains
Mohair, raw, cleaned, or scoured—Exempt—Law
Molasses—Not exempt—Law
Moss, see Forest products
Mushrooms, fresh—Exempt—Law
Nursery stock, see Horticultural commodities
Nutria carcasses, ground, for use as mink feed—Not exempt—Bureau
Nutria (or coypu), skinned, whole or chopped—Not exempt—Bureau
Nutria and rat carcasses, whole, frozen or unfrozen—Not exempt—Bureau
Nuts:
Blanched (placed in water hot enough to soften the skins and facilitate removal of kernel, but not sufficient to kill the enzymes)—Exempt—Bureau
Cashews, roasted or cooked—Not exempt—Bureau
Cashews, scorched (not roasted or cooked, but darkened in color unintentionally by overheating during shelling process)—Exempt—Bureau
Coconut, dried, shredded, flaked, or prepared by thread mill or devil mill to produce thread-like particles or granules, not further processed—Exempt—Bureau
Coconut meal, see separate heading: Copra meal
Macadamia nuts—Exempt—Bureau
Peanut meal—Not exempt—Law
Peanut shells, ground—Exempt—Law
Peanuts, roasted and salted in the shell—Not exempt—Bureau
Pistachio, shells colored with food coloring but not otherwise processed—Exempt—Bureau
Raw, shelled or unshelled—Exempt—Law
Roasted or boiled—Not exempt—Law
Shelled, raw—Exempt—Law
Shelled, salted (not roasted or otherwise similarly processed)—Exempt—Bureau
Shelled, sprayed or washed with preservative but not candied or flavored—Exempt—Bureau
Shells—Exempt—Law
Shells, ground peanut—Exempt—Law
Shells, peanut, pelletized, comprised of hulls or shells ground and formed into pellts by application of pressure with steam as binder (similar to production of alfalfa pellets)—Not exempt—Bureau
Shells, pecan, ground—Exempt—Case No. 17
Shells, pecan, mixed with chemicals equivalent to 10% of the total mixture—Not exempt—Bureau
Unshelled, raw—Exempt—Law
Oats, see Grains
Offal, consisting of blood, intestines, viscera, etc., by-product of the slaughtering of animals—Not exempt—Bureau
Oil, mint—Not exempt—Law
Oil, extracted from vegetables, grain, seed, fish, or other commodity—Not exempt—Law
Olives, see Fruits and Berries
Packaged commodities—Packaging exempt commodities does not affect their exempt status—Law
Peanuts, see Nuts
Peat Moss, see Forest products
Pelletized feeds, see Feeds
Pelts—Not exempt—Law
Pies, frozen—Not exempt—Law
Pigeons, racing, see Birds
Plants, vegetable or flower, see Horticultural commodities
Poles, see Forest products
Popcorn, see Grains
Potash—Not exempt—Bureau
Poultry and poultry Products:
Additives, such as injected butter, gravy, seasoning, etc., sold in or along with uncooked poultry, do not void the exempt if not in excess of 5% by weight—Bureau
Blood of poultry and rabbits from which corpuscles have been removed by centrifugal force (processing by a machine similar to a cream separator)—Exempt—Bureau
Broth, dehydrated by spray-drying into a powder—Not exempt—Case No. 25
Carcasses, raw, in marble-size chunks—Exempt—Bureau
Cut up, raw—Exempt—Bureau
Cut-up, precooked or cooked; same, breaded and/or battered; same, marinated, breaded and/or battered; all frozen or refrigerated—Exempt—Case No. 26
Deboned, cooked or uncooked, fresh or frozen, in rolls or diced—Exempt—Bureau
Dehydrated, chunked, process includes boiling, grinding, and drying—Not exempt—Case No. 25
Dinners, cooked and frozen—Exempt—Bureau; see also separate heading: Dinners
Dressed, fresh or frozen—Exempt—Law
Fat, as removed from poultry, not cooked—Exempt—Bureau

Fat, skimmed from broth, plain or reduced to powder by spray-drying—Not exempt—Case No. 25
Feathers—Exempt—Law
Frozen—Exempt—Law
Live—Exempt—Law
Offal, including blood (natural by-products of the killing and processing of poultry for market)—Exempt—Case No. 27
Picked—Exempt—Law
Pies, cooked, frozen or unfrozen—Not exempt—Bureau
Powdered, process includes boiling, fine grinding, and spray-drying—Not exempt—Case No. 25
Rolled in batter but uncooked—Exempt—Bureau
Rolls, containing sectioned and deboned poultry, cooked—Exempt—Bureau
Sticks, cooked—Exempt—Bureau
Stuffed and frozen—Exempt—Law
Stuffing, in plastic bags, packed with but not in bird—Exempt—Bureau
Pulp, beet—Not exempt—Law
Pulp, sugarcane—Not exempt—Law
Purees, see Fruits
Rabbits, dressed—Exempt—Law
Rabbits, wild, skinned—Not exempt—Bureau
Raisins, see Fruits
Ramie Fiber, see Fibers
Residue, (foots or sediments) remaining after removal of oil from various commodities—Not exempt—Bureau
Resin, see Forest products
Rice, see Grains
Rock—Not exempt—Law
Roots, see Forest products, Horticultural commodities, Spices and herbs
Rubber, crude, in bales—Not exempt—Law
Rubber, latex, natural, liquid, from which water has been extracted and to which ammonia has been added—Not exempt—Law
Rye, see Grains
Sand—Not exempt—Law
Sap, see Forest products
Sawdust, see Forest Products
Sea Creatures, see Fish
Seasoning or salt, added to a commodity within the exemption in insignificant amounts, not considered to affect exempt status of commodity—Bureau
Seaweed, dried, ground—Exempt—Law
Seeds:
Anise, not subject to a manufacturing process—Exempt—Bureau
Bird seed, see separate heading: Feeds
Cotton, see separate heading: Cottonseed
Deawned—Exempt—Law
Flax, see separate heading: Flaxseed
Grass seed—Exempt—Bureau
Grass seed, packaged in individual boxes and bags—Exempt—Bureau
Hybrid seed corn—Exempt—Bureau
Inoculated—Exempt—Law
Meal made from seeds, see Meal
Natural—Exempt—Law
Oil extracted from seeds—Not exempt—Law
Packets or boxes of seeds in display racks—Exempt—Law
Scarified—Exempt—Law
Screened or sized—Exempt—Law
Seed kits, flower or vegetable, consisting of seeds, soil substitutes, and plant food, in growing tray (punch and grow kits)—Not exempt—Bureau
Sesame seeds in hulls, bagged—Exempt—Bureau
Sesame seeds, cleaned and dehulled by mechanical process—Exempt—Bureau
Siftings and screenings consisting of residue from sieving of seeds (not further processed)—Exempt—Bureau
Soybean seeds, in bags to which are attached a small container of inoculant—Exempt—Bureau
Spice, see Spices
Sprayed for disease control—Exempt—Law
Sunflower seed hulls, lubricated by spraying with hot water to increase density, formed into loose, crumbling pellets—Exempt—Bureau
Tamarind, ground, comprised of seeds removed from pods without boiling, cooking, or the like, and processed only by cleaning and grinding—Exempt—Bureau
Used as seasonings, not subjected to a manufacturing process—Exempt—Bureau
Shells, see Cocoa bean, Eggs, Fish, Nuts
Shingle bolts, see Forest Products
Skins, animal—Not exempt—Law
Skins, seal (sea mammal hides)—Not exempt—Bureau
Sliced, see commodity name: Fruits, Vegetables, etc.
Sludge, dried sewage—Not exempt—Bureau
Soil, potting—Not exempt—Law
Soil, potting or African Violet Mix consisting of 90 percent peat, 8 percent sand and 2 percent vermiculite—Not exempt—Bureau
Soil, top—Not exempt—Law
Sorghum fodder—Exempt—Law
Sorghum grains—Exempt—Law
Soup, frozen—Not exempt—Law
Spanish moss, as gathered from trees—Exempt—Bureau
Spices and Herbs:
Angelica root—Exempt—Bureau
Chicory root, natural or dried—Exempt—Bureau
Chili powder, consisting of dried, ground chili pepper pods—Exempt—Bureau
Chili powder (mixture of ground peppers, spices and herbs, and a small amount of salt)—Exempt—Bureau
Cumin seed—Exempt—Bureau

Deer, (or deer's) tongue leaves, natural, dried, or processed in a manner similar to that undergone by redried, tobacco leaf—Exempt—Bureau
Ground, but not further processed—Exempt—Law
Paprika, ground—Exempt—Case No. 20
Pepper, ground, not further processed—Exempt—Bureau
Raw, unground spices—Exempt—Case No. 20
Reconditioned spices, ground (screened for removal of impurities but not further processed)—Exempt—Bureau
Seeds, see also that main heading
Sweet basil leaves, dried and separated from stems—Exempt—Bureau
Unground, whether seeds, berries, leaves, bark or roots—Exempt—Law
Stone, natural, marble or granite—Not exempt—Bureau
Stover—Exempt—Law
Straw—Exempt—Law
Sugar—Not exempt—Law
Sugar beets—Exempt—Law
Sugar cane—Exempt—Law
Sugar cane pulp—Not exempt—Law
Sugar, raw—Not exempt—Law
Syrup, cane—Not exempt—Law
Syrup, maple—Not exempt—Law
Tankage, consisting of offal from slaughtered animals—Not exempt—Bureau
Tea—Not exempt—Law-Ruling 110
Telephone poles, see Forest products
Textile waste, see Cotton waste
Tobacco:
Binder tobacco, composed of adhesive materials added to pulverized tobacco, the resultant mixture formed into flat sheets (similar to homogenized tobacco)—Not exempt—Bureau
Chopped leaf—Exempt—Law
Cigars and cigarettes—Not exempt—Law
Fragments, siftings and dust resulting from processes which produce tobacco items within the exemption (i.e. chopped tobacco leaf, redried leaf, etc.); also that which becomes unusable during preliminary handling prior to the manufacture of non-exempt tobacco items—Exempt—Bureau
Homogenized—Not exempt—Law
Leaf—Exempt—Law
Redried leaf—Exempt—Law
Smoking—Not exempt—Law
Stem meal—Not exempt—Bureau
Stemmed leaf—Exempt—Law
Stems—Exempt—Law
Tobacco made of ground-up scraps, considered a form of homogenized tobacco—Not exempt—Bureau
Topsoil—Not exempt—Law
Trees, see Forest products
Turtles, see Fish
Vegetables:
Bagged—Exempt—Law
Beans, dried artificially and packed in small container—Exempt—Law
Cabbage rolls (heads of cabbage pickled in water and salt after which the leaves are cut off and stuffed with a tomato and whole pepper, in jars with juice of pickled cabbage)—Not exempt—Case No. 18
Candied sweet potatoes, frozen—Not exempt—Law
Canned—Not exempt—Law
Cauliflower, cured in salt brine, shipped in open unsealed containers—Exempt—Case No. 21
Cooked—Not exempt—Law
Cooked in water or steam for a period longer than that necessary for the inactivation of the enzymes, or by immersion in oil or fat—Not exempt—Case No. 22
Cucumbers and other vegetables processed into pickles by the ordinary means—Not exempt—Bureau
Cucumbers and tomatoes, barrel-cured into kosher pickles (fresh cucumbers or tomatoes kept in barrel overnight with water, garlic, salt, spices and seasonings, then placed in jars and kept under refrigeration)—Not exempt—Case No. 18
Cucumber delight (sliced cucumbers with onions, peppers, sugar and salt, in jars or barrels with juices)—Not exempt—Case No. 18
Cucumbers, salt cured—Exempt—Law
Cured—Exempt—Law
Cut up, fresh, in cellophane bags—Exempt—Law
Dehydrated—Exempt—Law
Dried, naturally or artificially—Exempt—Law
French fried onion rings—Not exempt—Case No. 22
French fried potatoes—Not exempt—Law
Frozen—Not exempt—Law-Ruling 110
Garlic paste, made from fresh crushed garlic cloves heated only enough to deactivate the enzymes, small percentage of preservative added—Exempt—Bureau
Garlic powder—Exempt—Law
Graded—Exempt—Law
Mushrooms (considered vegetables for purposes of Section 203(b)(6), frozen—Not exempt—Bureau; Freeze dried (frozen, then thawed, then dehydrated)—Exempt—Bureau
Oil, extracted from vegetables—Not exempt—Law
Onion chips and flakes, dried—Exempt—Law
Onion powder—Exempt—Law
Onion powder, made from onions sauted in oil and then powdered or dehydrated—Not exempt—Bureau
Onion rings, frozen, shipped with frozen fish dinners of which they are intended to be a part—Exempt—Bureau

Onion, cured in salt brine, shipped in open unsealed containers—Exempt—Case No. 21
Peas, split—Exempt—Law
Pepper delight (peppers with vinegar, salt and sugar)—Not exempt—Case No. 18
Pepper hulls, cured in salt brine, shipped in open unsealed containers—Exempt—Case No. 21
Peppers and kraut, stuffed (whole peppers filled with sauerkraut in jars with natural sauerkraut juice)—Not exempt—Case No. 18
Pickled—Not exempt—Case No. 21
Potato by-product made from raw rejects, peeled and washed in caustic solution and hot water, dewatered, dried and ground—Exempt—Bureau
Potato by-product, consisting of mashed potatoes recovered from drying machines or gathered as spillage from floor during latter stages of processing of instant mashed potatoes—Not exempt—Bureau
Potato flakes (cooked and dehydrated flakes of potato)—Not exempt—Bureau
Potatoes, candied (sweet), whipped, rissole, or puff—Not exempt—Case No. 22
Potatoes, peeled, sliced, blanched or dipped in preservative solution, but not cooked or otherwise processed—Exempt—Bureau
Potatoes, peeled and scalded or blanched (not subjected to a greater degree of heat than that necessary to inactivate enzymes)—Exempt—Bureau
Potatoes, powdered, prepared from potatoes, washed, cooked, peeled, with moisture removed—Not exempt—Bureau
Powder, onion and garlic—Exempt—Law
Precooked, pouch-packed, with or without sauce—Not exempt—Case No. 22
Products, the ingredients of which include vegetable matter combined with other commodities—Not exempt—Case No. 22
Quick frozen—Not exempt—Law-Ruling 110
Romanian kraut (shredded cabbage with juice consisting of water, sugar, celery seed and fresh peppers)—Not exempt—Case No. 18
Sauerkraut, pickled by keeping shredded cabbage in a barrel for 36-40 hours, thence in cold storage for about 36 hours, then packed in jars with water, sugar, and benzoate of soda (requires refrigeration)—Not exempt—Case No. 18
Sauerkraut, uncooked, pickled, in sealed plastic containers or sealed wooden barrels—Not exempt—Bureau
Shelled—Exempt—Law
Soup, frozen—Not exempt—Law
Soybean meal—Not exempt—Law
Tomato juice—Not exempt—Bureau
Tomato paste, consisting of tomatoes heated to 190°—Not exempt—Bureau
Tomato pomace (residue remaining after juice extraction)—Not exempt—Bureau
Tomato powder, dehydrated without cooking, (not the residue left after juice extraction)—Exempt—Bureau
Tomatoes, in salt brine, to preserve freshness while in transit—Exempt—Case No. 21
Washed, fresh, in cellophane bags—Exempt—Law
Water, and distilled water—Not exempt—Bureau
Wax, beeswax, crude, in cakes and slabs—Exempt—Law
Wax, carnauba, as imported in slabs and chunks—Not exempt—Law
Wax, crude candelilla, boiled in water to which some acid is added, purpose of which is not to change the wax in any way but to remove the wax scales from the leaves of the plant on which it forms, and the resulting residue boiled again to remove excess moisture and debris—Exempt—Bureau
Whale meat, see Fish
Wheat, see Grains
Wheat products, see Feeds, Flour
Whey, powdered or dried—Exempt—Case No. 23
Whey lactose—Exempt—Case No. 29
Whey powder—produced by separating liquid whey, removing butter fat, drying, steam rolling, cutting, bagging for further drying, grinding and packaging—Exempt—Bureau
Wood, see Forest products
Wool:
Cleaned and scoured after being imported—Not exempt—Bureau
Grease, as obtained from cleaning or scouring process—Exempt—Law
Imported from any foreign country—Not exempt—Law-Ruling 110
Mixture of blend of imported and domestic wool—Not exempt—Bureau
Pulled wool (wool removed from hides after slaughter)—Not exempt—Bureau
Raw, cleaned or scoured, but not including wool imported from any foreign county—Not Exempt—Law-Ruling 110
Scoured, origin unknown—Not exempt—Bureau
Tags of domestic wool and mohair (matted and ragged locks as shorn)—Exempt—Bureau
Waste (carded, spun, woven, or knitted)—Not exempt—Law-Ruling 110
Yarn—Not exempt—Law
Wreaths, see Forest products
Worms, blood (cultivated in a "farming" type operation in marshy soil)—Exempt—Bureau
Worms, sea, live (gathered from mud flats, for use as bait)—Exempt—Bureau
Yeast, brewers' residual, or "bottom yeast" (substance which settles to bottom of vat

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during fermentation of beer or liquors)—Not Exempt—Bureau
Zoo animals—Not exempt—Law

Case List of Administrative Ruling No. 119

Case No.
1—Cossitt Motor Express Inc.—Powdered Milk and Casein, 96 M.C.C. 557
2—Sturgeon and Meeker, Extension—Wheat Bran, 84 M.C.C. 655
3—Atcheson, T. & S.F. Ry Co., Petition—103 M.C.C. 364
4—Refrigerated Dispatch Ltd., Inc.—Common Carrier Application, 81 M.C.C. 429
5—Phillips—Common Carrier Application, 82 M.C.C. 528
6—Fred C. Burns, Extension—Alexandria, Va., MC—111875 Sub 8, decided Oct. 27, 1960 (not printed)
7—Holt, Extension—Pilings, 77 M.C.C. 141
8—Poole, Extension—Calcium Chloride, 83 M.C.C. 522.
9—Edgar H. Allen & Son, Inc., Extension—Old Bridge, N.J., 98 M.C.C. 131
10—Chancey Bros. Truck Line, Extension—Lumber, 73 M.C.C. 85
11—Determination of Commodity Status—Petition, 113 M.C.C. 6
12—Everett—Investigation of Operation, 88 M.C.C. 784
13—Miller's Motor Freight, Inc., MC—41915 Sub 26, decided June 20, 1962 (not printed)
14—Maxwell Co., Extension—Cherries in Brine, 100 M.C.C. 10
15—Holland Highway Express, Inc., Extension—Plantains, 86 M.C.C. 93
16—Producers Transport, Inc., Extension—Soya Bean Husks, 103 M.C.C. 691
17—Kinner—Common Carrier Application, 99 M.C.C. 748
18—Seashore Food Products, Inc.—Declaratory Order, 95 M.C.C. 546
19—Petition for Declaratory Order—Wild Birdseed, 110 M.C.C. 406
20—Acme Carriers, Inc., Common Carrier Application, 74 M.C.C. 797
21—Hadder Trucking Co., Inc., Extension—Commodities in Brine, 79 M.C.C. 449
22—Frozen Cooked Vegetables—Status, 81 M.C.C. 649
23—Petition of Ida-Cal Freight Lines, Inc., MC-C-3557, Order of August 29, 1962 (not printed)
24—Hughes—"Grandfather" Application, 89 M.C.C. 471, 484-486
25—Henningsen Foods, Inc., Petition, 106 M.C.C. 286
26—Pillsbury Co. et al., v. U.S. et al., 409 U.S. 808 reversing 113 M.C.C. 225
27—Labertew Trucking, Inc., Extension—Poultry Offal, 96 M.C.C. 370
28—Grant's Trucking Co., Petitioner—Oyster Shells, 118 M.C.C. 892
29—I.C.C. v. Schaetzel, 339 F. Supp. 1345 (1972)
30—Forest Transport Corp., MC 138702 sub 2 decided April 8, 1974
31—Anderson Peat Co., Petition, 119 M.C.C. 494
32—Arkansas Rice Growers Coop. Assn., Petition, MC-C-7949—Initial decision served January 11, 1974; final report pending

(Administrative Ruling 119, which lists the status of various commodities under the exemption provided by Section 203(b)(6) of the Interstate Commerce Act)

[42 FR 44994, Sept. 8, 1977; 45 FR 22948, Apr. 4, 1980]

Partial Exemption for Motor Transportation of Property and Passengers Incidental to Transportation By Aircraft

§ 1047.45 Motor transportation of passengers incidental to transportation by aircraft.

(a) *Passengers having an immediately prior or subsequent movement by air.* The transportation of passengers by motor vehicle is transportation incidental to transportation by aircraft provided (1) that it is confined to the transportation of passengers who have had or will have an immediately prior or immediately subsequent movement by air and (2) that the zone within which motor transportation is incidental to transportation by aircraft, except as it may be individually determined as provided in section (c) herein, shall not exceed in size the area encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart and by the boundaries of the commercial zones (as defined by the Commission) of any municipalities any part of whose commercial zones falls within the 25-mile radius of the pertinent airport.

(b) *Substituted motor-for-air transportation due to emergency conditions.* Transportation of passengers by motor vehicle is transportation incidental to transportation by aircraft if it constitutes substituted motor-for-air service performed at the expense of the air carrier in emergency situations arising from the inability of the air carrier to perform air transportation due to adverse weather conditions,

equipment failure, or other causes beyond the control of the air carrier.

(c) *Individual determination of exempt zones.* Upon its own motion or upon petition filed by any interested person, the Interstate Commerce Commission may in an appropriate proceeding, determine whether the area within which the transportation by motor vehicle of passengers having an immediately prior or subsequent movement by air must be performed, in order to come within the provisions of paragraph (a) of this section, should be individually determined with respect to any particular airport or city served by an airport, and whether there should be established therefor appropriate boundaries differing in extent from this defined in paragraph (a)(2) of this section.

(d) *Exempt zones and operations—*(1) *Dulles and Baltimore-Washington International Airports.* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between Dulles International Airport, near Chantilly, Va., and Baltimore-Washington International Airport, near Baltimore, Md., is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act.

(2) *Savannah, Ga., Airport.* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between Savannah, Ga., Airport and all points on Hilton Head Island, S.C., is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act (49 U.S.C. 303).

(3) *Chicago O'Hare International Airport (Chicago, Ill.).* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between O'Hare International Airport, at Chicago, Ill., on the one hand, and, on the other, points in Indiana on and north of U.S. Highway 30 and on and west of Indiana Highway 49, is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act (49 U.S.C. 303).

[32 FR 20036, Dec. 20, 1967, as amended at 37 FR 5252, Mar. 11, 1972; 42 FR 10003, Feb. 18, 1977; 42 FR 15705; Mar. 23, 1977]

PART 1048—COMMERCIAL ZONES

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AUTHORITY: 49 Stat. 543, as amended, 544 as amended, 546, as amended; 49 U.S.C. 302, 303, 304.

§ 1048.1 Albany, N.Y.

The zone adjacent to, and commercially a part of Albany, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Albany, N.Y., itself.

(b) All points within a line drawn eight miles beyond the municipal limits of Albany.

(c) All points in that area more than eight miles beyond the municipal limits of Albany bounded by a line as follows: Beginning at that point on the western boundary of Cohoes, N.Y.,

where it crosses the line described in paragraph (b) of this section, thence along the western and northern boundary of Cohoes to the Mohawk River thence along such river to the northern boundary of the Town of Waterford thence along the northern and eastern boundaries of the Town of Waterford to the northern boundary of the City of Troy (all of which city is included under the next provision).

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Albany or any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.2 Beaumont, Tex.

The zone adjacent to, and commercially a part of Beaumont, Tex., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act [49 U.S.C. 303(b)(8)] includes and is comprised of all points as follows:

(a) The municipality of Beaumont, Tex., itself;

(b) All points within a line drawn 8 miles beyond the municipal limits of Beaumont;

(c) All points in Jefferson County and Orange County, Tex.;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Beaumont or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.3 Charleston, S.C.

The zone adjacent to, and commercially a part of Charleston, S.C., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, S.C., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Charleston County, S.C., which are not within the areas described in paragraph (b) of this section; and those points in Berkley County, S.C., which are not within the areas described in paragraph (b) of this section, and which are west of South Carolina Highway 41; and all points in Dorchester County, SC.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976, as amended at 46 FR 28658, May 28, 1981]

§ 1048.4 Charleston, W. Va.

The zone adjacent to, and commercially a part of Charleston, W. Va., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Charleston, W. Va., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Charleston;

(c) Those points in Kanawha County, W. Va., which are not within the area described in paragraph (b) of this section; and those points in Putman County, W. Va., south of West Virginia Highway 34;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Charleston or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.5 Lake Charles, La.

The zone adjacent to, and commercially a part of Lake Charles, La., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Lake Charles, La., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Lake Charles;

(c) Those points in Calcasieu Parish, La., which are not within the area described in paragraph (b) of this section; and which are east of Louisiana Highway 27 (western section);

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Lake Charles or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56653, Dec. 29, 1976]

§ 1048.6 Pittsburgh, Pa.

The zone adjacent to, and commercially a part of Pittsburgh within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pittsburgh, Pa., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Pittsburgh;

(c) Those points in Allegheny County, Pa., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Pittsburgh by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.7 Pueblo, Colo.

The zone adjacent to, and commercially a part of Pueblo, Colo., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulations under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Pueblo, Colo., itself;

(b) All points within a line drawn 6 miles beyond the municipal limits of Pueblo;

(c) Those points in Pueblo County, Colo., which are not within the area described in paragraph (b) of this section;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except

for a water boundary, by the municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.8 Ravenswood, W. Va.

The zone adjacent to, and commercially a part of Ravenswood, W. Va., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Ravenswood, W. Va., itself;

(b) All points within a line drawn 4 miles beyond the municipal limits of Ravenswood;

(c) Those points in Jackson County, W. Va., which are not within the area described in paragraph (b) of this section, and which are north of U.S. Highway 33;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Ravenswood or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.9 Seattle, Wash.

The zone adjacent to, and commercially a part of Seattle, Wash., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Seattle, Wash., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Seattle;

(c) Those points in King County, Wash., which are not within the area described in paragraph (b) of this section, and which are west of a line beginning at the intersection of the line described in paragraph (b) of this section and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, Wash., which are not within the area described in paragraph (b) of this section and which are west of Washington Highway 9; and those points in Kitsap County, Wash., which are not within the area described in paragraph (b) of this section lying within the area bounded by a line beginning at the intersection of the line described in paragraph (b) of this section and Washington Highway 3 to the boundary of Olympic View Industrial Park/Bremerton-Kitsap County Airport, thence westerly, southerly, easterly, and northerly along the boundary of Olympic View Industrial Park/Bremerton-Kitsap County Airport to its juncture with Washington Highway 3 to its intersection with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976, as amended at 46 FR 25314, May 6, 1981]

§ 1048.10 Washington, D.C.

The zone adjacent to, and commercially a part of Washington, D.C., within which transportation by motor vehicle in interstate or foreign commerce, not under common control, management, or arrangement for a

continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Washington, D.C., itself;

(b) All points within a line drawn 15 miles beyond the municipal limits of Washington, D.C.

(c) All points in Fairfax and Loudoun Counties, VA;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Washington, D.C., or by any other municipality included under the terms of paragraph (d) of this section.

[41 FR 56654, Dec. 29, 1976, as amended at 45 FR 28341, Apr. 29, 1980]

§ 1048.11 Twin Cities.

For the purpose of determining commercial zones, utilizing the general population-mileage formula as set forth in § 1048.101, each of the following combinations of cities shall be considered as a single municipality (a) having a population equal to the sum of their combined populations, and (b) having boundaries comprised of their combined corporate limits, with the common portion thereof disregarded:

(1) Bluefield, Va.-W. Va.

(2) Bristol, Va.-Tenn.

(3) Davenport, Iowa, and Rock Island and Moline, Ill.

(4) Delmar, Del-Md.

(5) Harrison, Ohio-West Harrison, Ind.

(6) Junction City, Ark.-La.

(7) Kansas City, Mo.-Kansas City, Kans.

(8) Minneapolis-St. Paul, Minn.

(9) St. Louis, Mo.-East St. Louis, Ill.

(10) Texarkana, Ark.-Tex.

(11) Texhoma, Tex.-Okla.

(12) Union City, Ind.-Ohio.

[41 FR 56654, Dec. 29, 1976]

§ 1048.12 Consolidated governments.

The zone adjacent to, and commercially a part of a consolidated government within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) All points within the boundaries of the consolidated government.

(b) All points beyond the boundaries of the consolidated government which were at any time within the commercial zone of the formerly independent core municipality.

(c) When the present population of the formerly independent core municipality is identifiable, all points beyond the boundaries of the consolidated government which are within the territory determined by the most recent population-mileage formula measured from the limits of the formerly independent core municipality.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the consolidated government or by any other municipality included under the terms of paragraphs (a), (b), or (c) of this section.

[41 FR 56654, Dec. 29, 1976]

§ 1048.13 New Jersey Area in which ex-maritime and ex-rail traffic will share in New York, N.Y., commercial zone.

The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, is hereby expressly extended to transportation which is performed wholly between points in New Jersey south of Interstate 495 and New Jersey Highway 3, east of the Garden State Parkway, and north of the Raritan River, on the one hand, and, on the other, points in the New York, N.Y., commercial zone as determined by application of § 1048.101, restricted to shipments that have had a prior or will have subsequent movement by rail or by water.

[41 FR 56655, Dec. 29, 1976]

§ 1048.14 Lexington-Fayette Urban County, Ky.

The zone adjacent to and commercially a part of Lexington-Fayette Urban County, Ky., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) Lexington-Fayette Urban County, Ky., itself.

(b) All other municipalities and unincorporated areas within 5 miles of the intersection of U.S. Highway 27 (Nicholasville Road) with the corporate boundary line between Jessamine County, Ky., and Lexington-Fayette Urban County, Ky.

[39 FR 13769, May 30, 1974. Redesignated at 41 FR 56655, Dec. 29, 1976]

§ 1048.15 Los Angeles, Calif., Harbor Zone.

The Los Angeles, Calif., Harbor Zone shall include all points within a line beginning at the Pacific Ocean and extending easterly along Rosencrans Avenue to its point of intersection with the western municipal limits of Compton, thence in an easterly direction along the northern municipal limits of Compton to the point where the eastern municipal limits of Compton and Rosencrans Avenue intersect, thence along Rosencrans Avenue in an easterly direction to its intersection with California Highway 19, thence extending southerly along California Highway 19 to its intersection with California Highway 91, thence easterly along California Highway 91, to the Los Angeles-Orange County line, thence south along said county line to the Pacific Ocean.

[41 FR 56655, Dec. 29, 1976]

§ 1048.16 Syracuse, N.Y.

The zone adjacent to, and commercially a part of Syracuse, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under Section 203 (b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8) includes and is comprised of all points as follows:

(a) The municipality of Syracuse, N.Y., itself;

(b) All points within a line drawn 10 miles beyond the municipal limits of Syracuse;

(c) Those points in the towns of Van Buren and Lysander, Onondaga County, N.Y., which are not within the area described in paragraph (b) of this section, but which are within an area bounded by a line beginning at the intersection of new New York Highway 48 with the line described in (b) above, thence northwesterly along new New York Highway 48 to junction New York Highway 370, thence westerly along New York Highway 370 to junction Emerick Road, thence northerly along Emerick Road to junction Dunham Road, thence northerly along Dunham road to junction New York Highway 192, thence easterly along New York Highway 192 to junction new New York Highway 48, thence northerly along new New York Highway 48 to junction New York Highway 213, thence easterly along New York Highway 213 to junction New York Highway 213A, thence easterly along New York Highway 213A to junction New York Highway 37, thence southerly along New York Highway 37 to its intersection with the line in (b) above;

(d) All of any municipality any part of which is within the limits of the combined area defined in (b) and (c) above, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Syracuse or any other municipality included under the terms of (d) above.

[42 FR 44816, Sept. 7, 1977]

§ 1048.17 Spokane, Wash.

The zone adjacent to, and commercially a part of Spokane, WA, within which transportation by motor vehi-

cle, in interstate or foreign commerce, not under control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under 49 U.S.C. 10526(b) includes and is comprised of all points as follows:

(a) The municipality of Spokane, WA, itself,

(b) All points within a line drawn 8 miles beyond the municipal limits of Spokane;

(c) All points within that area more than 8 miles beyond the municipal limits of Spokane bounded by a line as follows: From the intersection of the line described in (b) above and U.S. Highway 2, thence westerly along U.S. Highway 2 to junction Brooks Road, thence southerly along Brooks Road to junction Hallett Road, thence easterly along Hallett Road to its intersection with the line described in (b) above;

(d) All of any municipality any part of which is within the limits of the combined areas in (b) and (c) above; and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Spokane or any other municipality included under the terms of (d) above.

[45 FR 62085, Sept. 18, 1980]

§ 1048.18 Tacoma, Wash.

The zone adjacent to, and commercially a part of Tacoma, WA, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone, is partially exempt from regulation under section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act, includes and is comprised of all points as follows:

(a) The municipality of Tacoma, WA, itself;

(b) All points within a line drawn 8 miles beyond the municipal limits of Tacoma;

(c) Those points in Pierce County, WA, which are not within the area described in paragraph (b) of this section, but which are on Washington Highway 162 beginning at its intersection with the line described in (b) above, extending to and including Orting, WA, and all points within the Orting commercial zone.

(d) All of any municipality any part of which is within the limits of the combined area defined in (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Tacoma or any other municipality included under the terms of (d) of this section.

[45 FR 66460, Oct. 7, 1980]

§ 1048.19 Chicago, IL.

The zone adjacent to, and commercially a part of Chicago, IL, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a shipment to or from such zone, is partially exempt from regulation under section 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)), includes and is comprised of all points as follows:

(a) The municipality of Chicago, IL, itself;

(b) All points within a line drawn 20 miles beyond the municipal limits of Chicago;

(c) All points in Lake County, IL.

(d) All of any municipality any part of which is within the limits of the combined area defined in paragraphs (b) and (c) of this section, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality included under the terms of paragraph (d) of this section.

[46 FR 11286, Feb. 6, 1981]

§ 1048.100 Definitions.

For the purposes of this part, the following terms are defined:

(a) "Municipality" means any city, town, village, or borough which has been created by special legislative act or which has been, otherwise, individually incorporated or chartered pursuant to general State laws, or which is recognized as such, under the Constitution or by the laws of the State in

which located, and which has a local government. It does not include a town of the township or New England type.

(b) "Contiguous municipalities" means municipalities, as defined in paragraph (a) of this section, which have at some point a common municipal or corporate boundary.

(c) "Unincorporated area" means any area not within the corporate or municipal boundaries of any municipality as defined in paragraph (a) of this section.

[32 FR 20040, Dec. 20, 1967]

§ 1048.101 Commercial zones determined generally, with exceptions.

The commercial zone of each municipality in the United States, with the exceptions indicated in the note at the end of this section, within which the transportation of passengers or property, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, is exempt from all provisions of Part II, Interstate Commerce Act, except the provisions of section 204 relative to the qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be deemed to consist of:

(a) The municipality itself, hereinafter called the base municipality;

(b) All municipalities which are contiguous to the base municipality;

(c) All other municipalities and all unincorporated area within the United States which are adjacent to the base municipality as follows:

(1) When the base municipality has a population less than 2,500 all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality,

(2) When the base municipality has a population of 2,500 but less than 25,000 all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base municipality.

(3) When the base municipality has a population of 25,000 but less than 100,000 all unincorporated areas within 6 miles of its corporate limits and all of any other municipality any part of which is within 6 miles of the corporate limits of the base municipality, and

(4) When the base municipality has a population of 100,000 but less than 200,000 all unincorporated areas within 8 miles of its corporate limits and all of any other municipality any part of which is within 8 miles of the corporate limits of the base municipality.

(5) When the base municipality has a population of 200,000 but less than 500,000 all unincorporated areas within 10 miles of its corporate limits and all of any other municipality any part of which is within 10 miles of the corporate limits of the base municipality.

(6) When the base municipality has a population of 500,000 but less than 1 million, all unincorporated areas within 15 miles of its corporate limits and all of any other municipality any part of which is within 15 miles of the corporate limits of the base municipality.

(7) When the base municipality has a population of 1 million or more, all unincorporated areas within 20 miles of its corporate limits and all of any other municipality any part of which is within 20 miles of the corporate limits of the base municipality, and

(d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any municipality adjacent thereto which is included in the commercial zone of such base municipality under the provisions of paragraph (c) of this section.

[32 FR 20040, Dec. 20, 1967, as amended at 34 FR 9870, June 26, 1969; 34 FR 15482, Oct. 4, 1969; 41 FR 56655, Dec. 29, 1976]

NOTE: Except: Municipalities the commercial zones of which have been or are hereafter individually or specially determined.

§ 1048.102 Controlling distances and population data.

In the application of § 1048.101:

(a) Air-line distances or mileages about corporate limits of municipalities shall be used.

(b) The population of any municipality shall be deemed to be the highest figure shown for that municipality in any decennial census since (and including) the 1940 decennial census.

[32 FR 20040, Dec. 20, 1967, as amended at 37 FR 15701, Aug. 4, 1972]

PART 1049—TERMINAL AREAS

Sec.

1049.1 Terminal areas of motor carriers and freight forwarders at municipalities served.
1049.2 Terminal areas of motor carriers and freight forwarders at unincorporated communities served.

NOMENCLATURE CHANGES: 42 FR 51586, Sept. 29, 1977.

NOTE: In the application of this part, distances and population data shall be determined in the same manner as provided in § 1048.102 of this chapter. See also definitions in § 1048.100 of this chapter.

§ 1049.1 Terminal areas of motor carriers and freight forwarders at municipalities served.

The terminal area within the meaning of section 202(c) of the Interstate Commerce Act (49 U.S.C. 302(c)) of any motor carrier of property subject to Part II or of any freight forwarder subject to Part IV thereof, at any municipality authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or freight forwarder, within which transportation by motor vehicle in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or freight forwarder without compliance with the provisions, other than those in section 204 (49 U.S.C. 304) relative to qualifications and maximum hours of service of employees and safety of operation and equipment, of Part II of the act consists of and includes all points or places which are (a) within the commercial zone, as defined by this Commission, of that municipality, and (b) not beyond the limits of the operating authority of such motor carrier of property or freight forwarder.

(49 Stat. 543, 544 and 546, as amended; 49 U.S.C. 302, 303, 304)

[32 FR 20049, Dec. 20, 1967]

§ 1049.2 Terminal areas of motor carriers and freight forwarders at unincorporated communities served.

The terminal area within the meaning of section 202(c) of the Interstate Commerce Act (49 U.S.C. 302(c)) of any motor carrier of property subject to Part II (49 U.S.C. 301 et seq.) or any freight forwarder subject to Part IV thereof (49 U.S.C. 1001 et seq.), at any unincorporated community having a post office of the same name which is authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or freight forwarder, within which transportation by motor vehicle in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or freight forwarder without compliance with the provisions, other than those in section 204 (49 U.S.C. 304) relating to qualifications and maximum hours of service of employees and safety of operations and equipment, of Part II of the act, consists of (a) all points in the United States which are located within the limits of the operating authority of the motor carrier of property or freight forwarder involved, and within 3 miles of the post office at such authorized unincorporated point if it has a population less than 2,500, within 4 miles if it has a population of 2,500 but less than 25,000, or within 6 miles if it has a population of 25,000 or more; (b) all of any municipality any part of which is included under (a) of this section; and (c) any municipality wholly surrounded by any municipality included under paragaph (b) of this section, or so wholly surrounded except for a water boundary.

(49 Stat. 543, 544, 546, as amended; 49 U.S.C. 302, 303, 304)

[32 FR 20049, Dec. 20, 1967, as amended at 41 FR 56655 Dec. 29, 1976]

PART 1050—MOTOR CARRIER OPERATION IN THE STATE OF HAWAII

Sec.
1050.1 Definitions.
1050.5 Motor carriers operating solely in Hawaii exempt.

§ 1050.1 Definitions.

For the purposes of this part, the following terms and phrases are defined:

(a) "Motor carriers" means carriers by motor vehicle operating in the State of Hawaii.

(b) "Lawfully engaged in operation solely within the State of Hawaii" means engaged within the boundaries of that Stae in conformity with applicable State laws.

(c) "Qualified" as used to modify "motor carriers" means those motor carriers lawfully operating in Hawaii and which are not affiliated with a carrier operating in another State or States.

(Sec. 204, 54 Stat. 921; 49 U.S.C. 304)

[32 FR 20049, Dec. 20, 1967]

§ 1050.5 Motor carriers operating solely in Hawaii exempt.

It is hereby certified that transportation (except the transportation of household goods as defined by the Commission) in interstate or foreign commerce performed by all qualified motor carriers lawfully engaged in operation solely within the State of Hawaii is in fact of such nature, character or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy: *Provided, however,* That if the State of Hawaii makes a determination of the intrastate operating rights of the respective motor carriers, the exemption granted herein shall not be construed as exempting operations in interstate or foreign commerce any more extensive than those corresponding to the respective intrastate authorities granted by the State.

(Secs. 204(a)(4a) and 207; 49 Stat. 546, as amended, 551, as amended, 552, as amended, 554, as amended; 49 U.S.C. 304(a)(4a) and 307)

[37 FR 10506, May 24, 1972]

PART 1051—INFORMATION REQUIRED ON RECEIPTS AND BILLS

Sec.
1051.1 Information to be shown.
1051.5 Expense bills for transportation of chartered parties.

§ 1051.1 Information to be shown.

(a) Every common carrier by motor vehicle subject to the jurisdiction of this Commission shall, on and after the first day of January, 1937, cause to be shown on the face of each and every receipt or bill of lading issued for the transportation of property by such carrier in interstate or foreign commerce, information which shall include the names of the consignor and consignee; the points of origin and destination; the number of packages, description of the articles, and weight, volume or measurement (if the lawfully applicable rates or charges are published to apply per unit of weight volume or measurement) of the property received; and a record of this information shall be kept by the carrier by the preservation of a copy of such receipt or bill of lading.

(b) Every common carrier by motor vehicle subject to the jurisdiction of this Commission shall, on and after the first day of January, 1937, when collecting transportation charges, issue a freight or expense bill covering each shipment, and the original of such freight or expense bill shall be receipted on payment of the transportation charges and furnished to the shipper or the receiver, whichever may pay the charges; and shall cause to be shown on the face thereof the names of the consignor and consignee (except that as to reconsigned shipments the freight or expense bill shall not show the name of the original consignor); the date of shipment; the points of origin and destination (except that as to reconsigned shipments the freight or expense bill shall not show the original shipping point unless the final consignee pays transportation charges from such original shipping point); the number of packages, description of the articles, and weight, volume or measurement of the

property transported (if the lawfully applicable rates or charges are published to apply per unit of weight, volume or measurement); the exact rate or rates assessed; the total charges to be collected including a statement of the nature and amount of any charges for special service and the points at which such special service was rendered, the route of movement indicating each carrier participating in the transportation service, and the transfer point or points through which the shipment moved; either the address where remittance must be made or the address of the principal place of business of the issuer of the freight or expense bill, or both, at the issuer's option; and a record of this information shall be kept by the preservation of a copy of such freight or expense bill.

(Secs. 12,20,24 Stat.383, as amended, 386, as amended, 49 Stat. 546, as amended, 563, as amended;49 U.S.C. 12,20, 301,302,304,316, 317,318, 319, 320; 5 U.S.C. 552,553, and 559)

[46 FR 34594, July 2, 1981]

1051.5 Expense bills for transportation of chartered parties.

(a) *Form and issuance of bill.* Every common carrier of passengers by motor vehicle shall, when collecting charges for transportation of any chartered party in interstate or foreign commerce, issue an expense bill and cause to be shown on the face thereof the following:

(1) Serial number, which shall consist of one of a series of consecutive numbers assigned in advance and imprinted on the form of expense bill.

(2) Name of carrier.

(3) Name of person paying the charges together with name of the organization, if any, for which transportation is performed.

(4) Date or dates upon which transportation is performed.

(5) Origin, destination and general routing of trip.

(6) Number of vehicles used, and identification and seating capacity of each.

(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, which shall be separately stated.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Charges for transportation.

(11) Itemized charges for special services, if any, performed by the carrier.

(12) Itemized charges for other expenses, such as toll charges, parking fees, layover time, etc.

(13) Total charges assessed and collected.

(b) *Records to be retained.* A record shall be kept by the carrier of all expense bills by retaining for the period prescribed in the regulations governing the destruction of records, Part 1226 of this title, a copy of each such bill which is issued, and if any form of numbered expense bill is spoiled, voided, or unused for any reason a copy thereof, or a written record of its disposition, shall be retained for a like period.

(c) *Definitions.* As used in this section: (1) The term "chartered party" shall mean a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group; and (2) the term "common carrier of passengers by motor vehicle" shall include both those specifically authorized to perform charter operations and those authorized to transport chartered parties under section 208(c) of the Interstate Commerce Act (49 U.S.C. 308(c)) as an incident to the right to transport passengers over a regular route or routes.

(Secs. 204, 216, 220, 49 Stat. 546, 558, 563, as amended; 49 U.S.C. 304, 316, 320)

[32 FR 20049, Dec. 20, 1967]

PART 1052—HANDLING OF C.O.D. SHIPMENTS

Sec.

1052.1 Applicability.
1052.2 Tariff requirements.
1052.3 Remittance.
1052.4 Records.

AUTHORITY: 49 Stat. 546, as amended, 554, as amended, 557, as amended, 558, as amended, 563, as amended; 49 U.S.C. 304, 311, 315, 316, 319, 320.

SOURCE: 32 FR 20050, Dec. 20, 1967, unless otherwise noted.

§ 1052.1 Applicability.

The rules and regulations in this part apply to the transportation by motor vehicle of c.o.d. shipments by all common carriers of property subject to Part II of the Interstate Commerce Act, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and except such transportation which is performed for freight forwarders and on freight forwarder bills of lading.

§ 1052.2 Tariff requirements.

No common carrier of property subject to the provisions of Part II of the Interstate Commerce Act, except as otherwise provided in § 1052.1, shall render any c.o.d. service unless such carrier has published, posted and filed tariffs which contain the rates, charges and rules governing such service, which rules shall conform to the regulations in this part.

§ 1052.3 Remittance.

Every common carrier of property subject to Part II of the Interstate Commerce Act, except as otherwise provided in § 1052.1, shall remit each c.o.d. collection directly to the consignor or other person designated by the consignor as payee promptly and within ten (10) days after delivery of the c.o.d. shipment to the consignee. If the c.o.d. shipment moved in interline service, the delivering carrier shall, at the time of remittance of the c.o.d. collection to the consignor or payee, notify the originating carrier of such remittance.

§ 1052.4 Records.

Every common carrier of property subject to the provisions of Part II of the Interstate Commerce Act, except as otherwise provided in § 1052.1, handling c.o.d. shipments as a delivering carrier shall maintain a record of all c.o.d. shipments received for delivery in such manner and form as will plainly and readily show the following information with respect to each shipment: (a) Number and date of freight bill; (b) name and address of shipper or other person designated as payee; (c) name and address of consignee; (d) date shipment delivered; (e) amount of c.o.d.; (f) date collected by delivering carrier; (g) date remitted to payee; and (h) check number or other identification of remittance to payee.

PART 1053—CONTRACTS FOR TRANSPORTATION OF PROPERTY

Sec.

1053.1 Contracts or agreements to be in writing.
1053.2 Contract carriers of bullion, etc., relieved of requirements.
1053.3 Contract carrier authority-definition of shipper.

AUTHORITY: 5 U.S.C. 553, 559, and 49 U.S.C. 10321, 10764.

SOURCE: 45 FR 58866, Sept. 5, 1980, unless otherwise noted.

§ 1053.1 Contracts or agreements to be in writing.

No contract carrier by motor vehicle, as defined in 49 U.S.C. 10102(12) shall transport property for hire in interstate or foreign commerce except under special and individual contracts or agreements which shall be in writing, shall provide for transportation for a particular shipper or shippers, shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, shall cover a series of shipments during a stated period of time in contrast to contracts of carriage governing individual shipments, and copies of which contracts or agreements shall be preserved by the carriers parties thereto so long as such contracts or agreements are in force and for at least one year thereafter.

§ 1053.2 Contract carriers of bullion, etc., relieved of requirements.

Contract carriers of bullion, currency, jewels, and other precious and other very valuable articles are relieved of the requirements of executing and preserving contracts in the form and manner prescribed in § 1053.1.

§ 1053.3 Contract carrier authority-definition of shipper.

Contracts of contract carriers, as required by Ex Parte No. MC-12 (1 M.C.C. 628), must be between the contract carrier and a particular shipper or shippers. The term "shipper" means the person who controls the transportation and refers to the actual shipper rather than an intermediary. Such shipper may be nominally either the consignor or consignee, but must be one or the other. The payment of the charges for the transportation is evidence that the person who pays is the person who controls the transportation and such person will be presumed to be the shipper. However, this presumption is rebuttable and can be rebutted by evidence demonstrating that a person not paying the transportation charges controls the selection of the carrier and the routing of the shipment. In such an instance, the person selecting the carrier and controlling the routing of the shipment would be presumed to be the shipper. The contract carrier may not transport property for shippers other than the shipper with whom he has a contract.

PART 1054—SPECIAL OR CHARTERED PARTIES BY COMMON CARRIERS

Sec.

1054.1 Applicability of this part.
1054.2 Definitions.
1054.3 Origin territory.
1054.4 Destination territory.
1054.5 General provisions.
1054.6 Limitations of service.

AUTHORITY: 49 Stat. 546, as amended, 552, as amended; 49 U.S.C. 304, 308.

SOURCE: 32 FR 20051, Dec. 20, 1967, unless otherwise noted.

§ 1054.1 Applicability of this part.

(a) The regulations in this part shall apply to all common carriers of passengers authorized by section 208(c) of the Interstate Commerce Act, to transport special or chartered parties as an incident to the right to engage in the transportation of passengers by motor vehicle in interstate or foreign commerce over a regular route or routes and between fixed termini, whether such regular-route operation is authorized by a certificate of public convenience and necessity issued by the Commission, under the first proviso of section 206(a) or under section 207(a) of the Interstate Commerce Act.

(b) The regulations in this part shall not be applicable to common carriers of passengers authorized by a certificate of public convenience and necessity to perform special or charter operations or both, within a specified territory or from, to, or between specific points under the provisions of the first proviso of section 206(a) of the act, or under the proviso of section 207(a) thereof, which specific operations shall be limited strictly to the authority described in the certificate of each carrier so engaged.

§ 1054.2 Definitions.

(a) The term "special or chartered party," as used in the regulations in this part, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(b) The term "regular route or routes," as used in the regulations in this part, means the specific highway or highways over which a motor common carrier of passengers is authorized to operate between fixed termini.

(c)(1) The term "third party," as used in the regulations in this part, means a government agency or person (as defined in § 203(a)(1)), engaged in a business or activity other than the transportation of passengers or other than as a broker of passenger transportation, who enters into a contract with a carrier for the exclusive use of a passenger-carrying motor vehicle covering either (i) A one-way movement of passengers for whom the contracting party is responsible from a specified origin to a specified destination, or (ii) A round trip movement of

passengers, as defined in paragraph (c)(2) of this section, for whom the contracting party is responsible, without regard to the identity of the individuals transported for any segment of the trip.

(2) The term "round trip," as used in the regulations in this part, means a movement of passengers from a specified origin to a specified destination followed by a movement of passengers from that destination back to the origin point, provided that, where the identity of the group of passengers for each segment of the trip is not the same, the time between completion of the origin-to-destination segment of the trip and the commencement of the destination-back-to-origin segment does not exceed 24 hours.

[32 FR 20051, Dec. 20, 1967, as amended at 41 FR 27838, July 7, 1976]

§ 1054.3 Origin territory.

Any common carrier of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties (a) which originate at any point or points on the regular route or routes, or at any off-route point or points, authorized to be served by such carrier, or (b) which originate at any point or points within the territory served by its regular route or routes.

§ 1054.4 Destination territory.

Common carriers of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties in interstate or foreign commerce to any place or point in the United States. Special or chartered parties may not be transported from the destination territory described in this rule to the origin territory described in § 1054.3 except on return movement of the same special or charter party as provided therein, or pursuant to a round trip contract with a third party as described in § 1054.2(c).

[32 FR 20051, Dec. 20, 1967, as amended at 41 FR 27838, July 7, 1976]

§ 1054.5 General provisions.

Every common carrier of passengers by motor vehicle, subject to these regulations, shall be governed by the following general provisions:

(a) *Deadhead mileage.* Carriers shall publish in tariffs, lawfully on file with this Commission, reasonable rates or charges applicable in connection with the transportation of special or chartered parties within the meaning of section 208(c) for deadhead mileage which shall be the mileage, over the shortest practical highway route, traversed by the bus without passengers from the nearest point at which equipment is held out to be available to the place where the chartered party originates, and from the place of discharge of such party to (i) the nearest point where equipment is held out to be available, or (ii) the equipment-availability point nearest the origin point of the chartered party: *Provided, however,* That in no case shall the total charges, including all deadhead mileage charges, for the one-way transportation of chartered parties from any origin point to any destination point exceed the total charges, including all deadhead mileage charges, applicable for the round-trip transportation of like chartered parties over the same route from the same origin point to the same destination point and return to such origin point. Such tariffs shall name the points at which the carrier holds out to have equipment available for special or chartered party service, and no equipment shall be held out as available at any point not an authorized-on-route or off-route point. The tariffs also shall clearly specify the movements, if any, governed by (i) above, and, separately, those, if any, governed by (ii).

(b) Special or chartered parties may be transported on an all-expense basis, provided that the tariffs of carriers offering such service, lawfully on file with the Commission, publish transportation rates or charges separately from the charges for meals, hotel accommodations, or other incidental expenses.

(c) Common carriers of passengers subject to the rules in this part shall comply with section 215 of the act and the rules and regulations thereunder governing the filing and approval of surety bonds and policies of insurance (Part 1043 of this chapter), and shall

designate and file with the board of each State in which they transport special or chartered parties and with the Commission, the name and address of a person upon whom notices, orders, and process may be served as provided in section 221 (a) and (c) of the act.

§ 1054.6 Limitations of service.

(a) No common carrier of passengers by motor vehicle subject to the rules in this part shall transport special or chartered parties, as defined in this part, between the same points or over the same route so frequently as to constitute a regular scheduled or nonscheduled service.

(b) No common carrier of passengers by motor vehicle subject to the rules in this part shall transport passengers to whom individual tickets have been sold or with whom separate and individual transportation arrangements have been made (1) from or to any point or points except those upon its regular route or routes or authorized to be served as off-route points, or (2) over any route or routes other than those so authorized to be served by such carrier. The transportation of any passengers under any such arrangements by any such carrier to or from any point or points not on the regular route or routes of such carrier or to or from any point not authorized to be served as an off-route point, or over any route or routes other than those authorized to be served by such carrier, except as a member of a special or chartered party as herein defined, is not authorized and is hereby forbidden. The provisions of this paragraph shall not be construed as restricting in any way special or charter operations referred to in § 1054.1(b).

(c) No common carrier of passengers by motor vehicle subject to the rules in this part authorized to perform seasonal operations over regular routes may transport special or chartered parties except during the period in which such regular-route operations may be performed.

PART 1055—DISCRIMINATION IN OPERATIONS OF INTERSTATE MOTOR COMMON CARRIERS OF PASSENGERS

Sec.

1055.1 Discrimination prohibited.
1055.2 Notice to be printed on tickets.
1055.3 Discrimination in terminal facilities.
1055.4 Notice to be posted at terminal facilities.
1055.5 Carriers not relieved of existing obligations.
1055.6 Reports of interference with regulations.
1055.10 Definitions.

AUTHORITY: 52 Stat. 1237, 49 U.S.C. sec. 304.

SOURCE: 36 FR 1338, Jan. 28, 1971, unless otherwise noted.

§ 1055.1 Discrimination prohibited.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall operate a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed, or national origin.

§ 1055.2 Notice to be printed on tickets.

Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall cause to be printed on every ticket sold by it for transportation on any vehicle operated in interstate or foreign commerce a plainly legible notice as follows: "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin."

NOTE: The following intrepretation of the provisions of § 1055.2 appears at 27 FR 230, Jan. 9, 1962:

The words, "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin", should appear on the face of every ticket coming within the purview of the section. If the ticket is in parts or consists of additional elements, such as coupons, identification stubs, or checks, it shall be sufficient for the purposes of § 1055.2 that the notice appear only once on the ticket and be placed on the face of that portion of the ticket which is held by the passenger.

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§ 1055.3 Discrimination in terminal facilities.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin.

§ 1055.4 Notice to be posted at terminal facilities.

No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce utilize any terminal facility in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of these regulations. Such sign or placard shall be captioned: "Public Notice: Regulations Applicable to Vehicles and Terminal Facilities of Interstate Motor Common Carriers of Passengers, by order of the Interstate Commerce Commission."

§ 1055.5 Carriers not relieved of existing obligations.

Nothing in this regulation shall be construed to relieve any interstate motor common carrier of passengers subject to section 216 of the Interstate Commerce Act of any of its obligations under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

§ 1055.6 Reports of interference with regulations.

Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act operating vehicles in interstate or foreign commerce shall report to the Secretary of the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic with its observance of the requirements of these regulations in this part. Such report shall include a statement of the action that such carrier may have taken to eliminate any such interference.

§ 1055.10 Definitions.

For the purpose of these regulations the following terms and phrases are defined:

(a) *Terminal facilities.* As used in these regulations the term "terminal facilities" means all facilities, including waiting room, rest room, eating, drinking, and ticket sales facilities which a motor common carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation.

(b) *Separation.* As used in § 1055.3, the term "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguish on the basis of race, color, creed, or national origin.

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Sec.

1056.1 Applicability and definitions.
1056.2 Information for shippers.
1056.3 Estimates of charges.
1056.4 Final charges on shipments subject to minimum weight or volume provisions.
1056.5 Order for service.
1056.6 Receipt or bill of lading.
1056.7 Determination of weights.
1056.8 Reasonable dispatch.
1056.9 Notification of charges.
1056.10 Signed receipt for shipment-release prohibited.
1056.11 Selling of insurance to shippers.
1056.12 Liability of carriers.
1056.13 Complaint and inquiry handling.
1056.14 Agency agreements.
1056.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.
1056.16 Collection of freight charges on shipments transported on more than one vehicle.
1056.17 Advertising by motor common carriers of household goods.

Sec.

1056.18 Preparation and filing of annual performance report.
1056.19 Use of charge card plans.

AUTHORITY: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

SOURCE: 46 FR 16218, Mar. 11, 1981, unless otherwise noted.

§ 1056.1 Applicability and definitions.

(a) The regulations in this part are applicable to the operations of motor carriers engaged in the transportation of household goods as defined in paragraph (b)(1) of this section in interstate or foreign commerce.

(b) *Definitions.* As used in this part:

(1) *Household Goods.* The term "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this definition shall not be construed to include property moving from a factory or store except such property as a householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by the householder. The regulations under this part do not apply to the transportation of property transportable under 49 U.S.C. 10102(10) (B) and (C).

(2) *Reasonable dispatch.* The term "reasonable dispatch" means the performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the dates or during the period of time agreed upon by the carrier and the shipper and shown on the Order For Service/Bill of Lading, *Provided,* That the defenses of force majeure as construed by the courts shall not be denied the carrier.

(3) *Advertisement.* The term "advertisement" means any communication to the public in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a listing of a carrier name, address, and telephone number in a telephone directory or similar publication.

(4) *Certified Scales.* As used in this part, a certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale properly inspected and certified.

(5) *Individual Shipper.* As used in this part, "individual shipper" refers to any person who is the consignor or consignee of a household goods shipment and is identified as such in the bill of lading contract and owns the goods being transported.

(6) *Commercial Shipper.* As used in this part, "commercial shipper" refers to (a) any person, excluding the federal government, who is named as the consignor and/or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods, normally an employee of the consignor and/or consignee; or, (b) a freight forwarder which tenders a shipment to a carrier in furtherance of authorized or exempt freight forwarder operations.

(7) *Government Bill of Lading Shipper.* As used in this part, "government bill of lading shipper" refers to any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the federal government to the carrier responsible for the transportation of the shipment.

(8) *Other terms.* Where any other terms used in the regulations in this part are defined in 49 U.S.C. 10102, such definitions shall be controlling. Where terms are used in this part which are neither defined herein nor in 49 U.S.C. 10102, they shall have the ordinary practical meaning of such terms.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.2 Information for shippers.

(a) Prior to the execution of an order for service of a shipment of household goods, as defined in 49 CFR 1056.1(b)(1), every motor common carrier holding out to perform the service shall cause to be furnished to the pros-

pective individual shipper the following publications.

(1) Publication OCP-100, *Your Rights and Responsibilities When You Move.*

(2) A concise, easy-to-read, accurate summary of any dispute settlement program in which the carrier participates, as provided in 49 U.S.C. 11711 and approved by the Commission.

(3) A copy of the Form OCP-101, *Annual Performance Report,* most recently filed with the Commission if the carrier is required by 49 CFR 1056.18 to prepare and file such report.

(4) A written description of the customer complaint and inquiry handling procedures established and maintained by the carrier. Included in this description shall be a telephone number which the shipper may use to communicate with the carrier, accompanied by a clear and concise statement concerning who shall pay for such calls.

General Requirements

(1) The text and format of the publication shall not be changed without the written approval of the Director, Office of Consumer Protection, Interstate Commerce Commission.

(2) The Director, Office of Consumer Protection, Interstate Commerce Commission, shall, within 30 days following the effective date of a decision of the Interstate Commerce Commission changing any rule or regulation published at 49 CFR 1056, cause to be published in the FEDERAL REGISTER a notice of amendment to Publication OCP-100 reflecting such change or changes.

(3) The dimensions of the publication shall be optional, *Provided, however,* The product of multiplying the length by the width shall be not less than 36 square inches.

(4) The color and design of the front and back cover of the publication shall be optional. *Provided,* the only words printed or appearing on the front cover shall be "*Your Rights and Responsibilities When You Move.*"

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.3 Estimates of charges.

(a) *Binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may provide in their tariffs for the preparation and furnishing to shippers of binding estimates of the costs which the shippers will be required to pay for the services included in the estimates. Binding estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on its face that the estimate is binding on the carrier and that the charges shown are the charges which will be assessed for the services identified in the estimate. Binding estimates must clearly describe the shipment and all services to be provided.

(b) *Non-binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may provide estimates of the approximate costs which will be assessed for the transportation of such shipments. Non-binding estimates shall be reasonably accurate. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on shipments moved on non-binding estimates shall be those appearing in the carriers' tariffs applicable to the transportation. Non-binding estimates must be furnished without charge and in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is not binding on the carrier and that the charges shown are the approximate charges which will be assessed for the services identified in the estimate. Non-binding estimates must clearly describe the shipment and all services to be provided.

(c) *Estimated charges required to be entered on the order for service and*

bill of lading. Motor common carriers furnishing non-binding estimates shall enter the estimated charges on the order for service, if an order for service is required, and on the bill of lading.

(d) *Maximum charges required to be paid at time of delivery on collect on delivery shipments subject to non-binding estimates of approximate costs.* At time of delivery of a collect on delivery shipment, except when such shipment is delivered to a warehouse for storage at the request of the shipper, on which a non-binding estimate of the approximate costs has been furnished by the carrier under the provisions of paragraph (b), the shipper may request delivery of the shipment upon payment, in a form acceptable to the carrier, of an amount not exceeding 110 percent of the estimated charges. The carrier shall, upon request of the shipper, relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and shall defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery.

§ 1056.4 Final charges on shipments subject to minimum weight or volume provisions.

(a) Motor common carriers engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1), providing service for individual shippers on rates based on the transportation of a minimum weight or volume, must indicate on the order for service the minimum weight or volume-based rates, and the the minimum charges applicable to the shipment.

(b) Failure to comply with the requirements of paragraph (a) shall require, and the governing tariff shall contain, a rule providing that the final charges relating to such a shipment be computed based on the actual weight or volume of the shipment.

§ 1056.5 Order for service.

(a) *Order for service required.* Every motor common carrier shall, prior to the receipt of a shipment of household goods as defined in 49 CFR 1056.1(b)(1) to be moved for an individual shipper, prepare an order for service which contains the following mimunum information:

(1) Name and address and ICC docket number of carrier who is responsible for performing the service.

(2) Shipper's name, address and, if available, telephone number.

(3) Name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number at which the shipper/consignee may contact the carrier or its designated agent.

(5) Agreed pickup date and agreed delivery date, or the agreed period or periods of time within which pickup, delivery, or the entire move, will be accomplished. If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation and delivery and any penalty or per diem requirements of the agreement shall be entered under this item.

(6) Complete description of any special or accessorial services ordered; and minimum weight or volume charges applicable to the shipment.

(7) Any identification or registration number assigned the shipment by the carrier.

(8) Amount of estimated non-binding charges; method of payment of total charges; and, maximum amount required to be paid at time of delivery to obtain possession of the shipment or, the amount of charges required to be paid based on a binding estimate and the terms of payment under that estimate.

(9) Whether the shipper requests notification of the charges prior to delivery and the telephone number or address at which such communications will be received.

(10) Signatures Required. The order for service shall be signed by the shipper who is ordering the service, and by the carrier or its agent. A copy of the order for service shall be dated and furnished the shipper at the time it is executed.

(b) *Amendments to an order for service.* Prior to loading an order for service may be amended by agreement of both parties.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.6 Receipt or bill of lading.

(a) *Issuance of a receipt or bill of lading.* Every motor common carrier engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) shall issue a receipt or bill of lading. The bill of lading shall contain the minimum information required by § 1056.6(b) and the terms and conditions of the contract. The carrier shall furnish a complete copy of the bill of lading to the shipper prior to the commencement of the loading of a shipment.

(b) *Minimum information required on a receipt or bill of lading.* Whenever a receipt or bill of lading is issued in compliance with paragraph (a), the carrier shall cause to be included therein the following minimum information:

(1) The name and address of the motor carrier issuing the receipt or bill of lading.

(2) The names and addresses of any other motor carriers, when known, which will participate, through interline, in the transportation of the shipment.

(3) The name, address and telephone number of the office of the carrier that should be contacted in relation to the transportation of shipments.

(4) When the transportation is to be performed on a collect on delivery basis, the name, address and, if furnished, the telephone number of a person to whom notification provided for in § 1056.9(b) shall be given.

(5) When the transportation is to be performed for an individual shipper, and except when the transportation is to be performed subject to tariff provisions providing for guaranteed service dates, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered on the receipt or bill of lading shall conform to the agreed dates or periods of time for pickup and delivery entered on the order for service or a proper amendment to the order for service.

(6) When the transportation is to be performed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service, the dates for pickup and delivery and any penalty or per diem entitlements due the shipper under the agreement.

(7) The actual date of pickup.

(8) The company or carrier identification number of the vehicle on which the shipment is loaded.

(9) The terms and conditions for payment of the total charges including notice of any minimum charges.

(10) When the transportation is to be performed on a collect on delivery basis and if a pre-move estimate of the charges is provided to the shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

(11) The released rates valuation statement required by 49 CFR 1307.201(c).

(12) Evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(c) *Copy of receipt or bill of lading to accompany shipment.* A copy of the receipt or bill of lading shall accompany a shipment at all times while in the possession of a carrier. When the shipment is loaded on a vehicle for transportation the receipt or bill of lading shall be in possession of the driver responsible for the shipment.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.7 Determination of weights.

(a) Every motor common carrier transporting household goods on a non-binding estimate shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight. Except as otherwise provided herein the weight shall be obtained on a scale meeting the definition of a certified scale as provided in 49 CFR 1056.1(b)(4).

(1) *Weighing procedure.* Except as otherwise provided herein the weight of each shipment shall be obtained by determining the difference between the tare weight of the vehicle on which the shipment is to be loaded

prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or, the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(2) At the time of both weighings the vehicle shall have installed or loaded all pads, dollies, handtrucks, ramps and other equipment required in the transportation of such shipments. Neither the driver nor any other persons shall be on the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and the trailer weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment and the gross weight of the container with the shipment loaded therein.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these regulations or otherwise.

(b) *Weight tickets.* The carrier shall obtain a separate weight ticket for each weighing required under this section except when both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket must be signed by the person performing the weighing and must contain the following minimum information:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries thereon as being the tare, gross and/or net weights.

(4) The company or carrier identification of the vehicle.

(5) The last name of the shipper as it appears on the Bill of Lading.

(6) The carrier's shipment registration or Bill of Lading number.

(7) The original weight ticket or tickets relating to the determination of the weight of a shipment must be retained by the carrier as part of the file on the shipment. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(c) *Reweighing of shipments.* Before the actual commencement of the unloading of a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

§ 1056.8 Reasonable dispatch.

(a) Unless accepted for transportation on the basis of guaranteed pickup and delivery dates:

(1) *Reasonable dispatch required.* Each motor common carrier accepting shipments of household goods as defined in 49 CFR 1056.1(b)(1) for transportation for the account of individual shippers shall cause such shipments to be transported with reasonable dispatch as defined in 49 CFR 1056.1(b)(2).

(2) *Notification of delay in providing service with reasonable dispatch.* Whenever a carrier is unable to per-

form either or both the pickup and delivery of a shipment on the dates or during the periods of time specified in the order for service, the carrier shall notify the shipper by telephone, telegram or in person, at the carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the carrier that it will be unable to provide the service in compliance with the terms of the order for service.

(3) *Carrier notification of delay.* At the time of notification of delay the carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made, which considers the needs of the shipper. If the notification of delay occurs prior to the pickup of the shipment, the amendment shall be in writing as required by 49 CFR 1056.5(b). If the notification of delay occurs subsequent to the pickup of the shipment, the carrier representative notifying the shipper of the delay shall prepare a written record of the date, time and manner of notification and the amended date or period of time for delivery by the carrier which record shall be retained by the carrier as part of its file on the shipment and a true copy thereof shall be furnished, by first class mail or in person, to the shipper.

(b) *Tendering for delivery.* Except upon the request or concurrence of the shipper, a shipment being transported for an individual shipper shall not be tendered for delivery prior to the agreed delivery date or period of time specified on the bill of lading: *Provided,* That whenever a carrier is able to tender such a shipment for final delivery more than 24 hours prior to such specified date or the first day of such specified period of time, and the shipper has not requested or concurred in such early delivery, the carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in proximity to the destination of the shipment. Whenever a carrier shall exercise such option it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment. The carrier's responsibility for the shipment under the terms and conditions of the bill of lading and its responsibility for the charges for redelivery, handling and storage thereof shall continue until final delivery: *Provided,* that the carrier's responsibility under the bill of lading shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.9 Notification of charges.

(a) Whenever an individual shipper of a shipment being transported on a collect on delivery basis specifically requests notification of the actual weight or volume and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such request upon determining the actual weight and charges. Such notification shall be made by telephone, telegram, or in person.

(b) Whenever a shipper requests notification of the weight or volume and charges on a shipment as provided in paragraph (a), the notification must be received by the shipper, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery. The 24-hour notification requirement shall not apply on a shipment to be backweighed or on a shipment which, with the agreement of the shipper, is to be picked up and delivered within a time period encompassing two consecutive week days, or on a shipment on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110 percent of the estimated charges.

§ 1056.10 Signed receipt for shipment-release prohibited.

A shipping document to be signed by the consignee at time of delivery shall not contain any language which purports to release or discharge the carrier or its agents from liability, but may

contain a statement that the property has been received in apparent good condition except as noted on the shipping documents.

§ 1056.11 Selling of insurance to shippers.

(a) When a shipment is released for transportation at a value not exceeding 60 cents per pound per article, and the shipper does not declare a valuation of $1.25 or more per pound and pay or agree to pay the carrier for assuming liability for the shipment equal to the declared value, any common carrier of household goods as defined in 49 CFR 1056.1(b)(1), or any employee, agent, or representative thereof, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in excess of the specified carrier liability to a shipment or shipments of household goods to be transported in interstate or foreign commerce by such carrier; *Provided,* that the shipper is issued a policy or other appropriate evidence of the insurance purchased, and a copy thereof be furnished to the shipper at the time the insurance is sold or procured. Carrier issued policies shall be written in plain English and shall clearly specify the nature and extent of coverage. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

(b) Any carrier offering or selling or procuring insurance as provided in paragraph (a) of this section shall provide in its tariff for the provision of such service. The tariff shall also provide for the base transportation charge to include assumption by the carrier for full liability for the value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase.

§ 1056.12 Liability of carriers.

(a) *Liability restricted.* Except as provided in § 1056.11(a), common carriers by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall not assume any liability in excess of that for which they are legally liable under their lawful bills of lading and published tariffs.

(b) *Limitations of liability.* A common carrier by motor vehicle of household goods shall be liable for loss of or damage to any articles caused by it while being transported or while being held for storage-in-transit, including incidental pickup or delivery, and including liability for loss or damage to any article or appliance resulting from the servicing of such article or appliance by a third person engaged by the carrier to perform such service, to the extent provided in the outstanding released rates order; except that the carrier may exempt its liability in the following instance:

(1) No liability need be assumed for perishable articles included in the shipment without the knowledge of the carrier; and a carrier accepting for shipment perishable articles may impose reasonable conditions necessary to insure the safe transportation of such commodities.

(c) *Storage-in-transit.* A common carrier by motor vehicle of household goods holding goods for storage-in-transit (S.I.T.) shall, no less than 10 days prior to the expiration of either the specified period of time during which the goods are to be held in such storage or the maximum period of time provided in the carrier's tariff for storage-in-transit, notify the shipper in writing (1) of the date of conversion to permanent storage, (2) of the existence of a nine-month period subsequent to the date of conversion to permanent storage during which shipper may file claims against the carrier for loss and/or damage which occurred to the goods in transit or during the S.I.T. period, and, (3) of the fact that on the date of conversion, the liability of the carrier shall terminate and the property shall be subject to the rules, regulations, and charges of the warehouseman. Notification shall be by certified mail, return receipt requested. A common carrier by motor vehicle of household goods holding goods for storage-in-transit for a period of time less than 10 days shall, no less than one day prior to the expiration of the specified time during which the goods are to be held in such storage, give no-

tification to the shipper of the information specified in paragraph (d) (1), (2), and (3) and maintain a record thereof as part of its record of the shipment. Failure or refusal of a carrier to notify the shipper in accordance with the foregoing shall automatically effect a continuance of carrier liability pursuant to the applicable tariff provisions with respect to S.I.T., until the end of the day following the date upon which notice is given.

§ 1056.13 Complaint and inquiry handling.

(a) Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(a) shall establish and maintain a procedure for responding to complaints and inquiries from shippers for which such transportation is provided. The procedure shall include a means whereby shippers may communicate with the principal office of the carrier by telephone.

(b) The carrier shall retain and make part of the file relating to a shipment a written record of all complaints and inquiries received from a shipper by any means of communication.

§ 1056.14 Agency agreements.

(a) Household Goods Agents are defined as follows:

(1) Prime agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service for or on behalf of the principal carrier, including the selling of or arranging for any transportation service, and who perform such services on other than an emergency or temporary basis.

(2) Military agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services only on shipments transported on Government bills of lading issued by the Department of Defense, and who perform such services on other than an emergency or temporary basis.

(3) Temporary agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services on behalf of the principal carrier, excluding the selling of or arranging for any transportation service, and who perform such services on an emergency or temporary basis.

(b) Agreements between principal carriers and their prime or military agents must be reduced to writing and signed by the principal and the retained agent, and copies of any such agreements must be in the files of the principal carrier for a period of not less than 24 months following the date of termination of each agreement.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.15 Collection of freight charges on household goods shipments involving loss or destruction in transit.

(a) No motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, any published freight charges (including any charges for accessorial or terminal services) when that shipment is totally lost or destroyed in transit. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, any specific valuation charge that may be due. This subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper.

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, no motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper to pay, at the time of delivery, that proportion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the snipment which is lost or destroyed in transit. In order to calculate the charges applicable to the shipment as delivered, the carrier shall

multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment as tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges shall apply. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, that proportion of any accessorial or terminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. The provisions of this subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the proportion of the shipment not lost or destroyed in transit.

(c) The rights provided by this section are in addition to, and not in lieu of, any other rights which the shipper may have with respect to a shipment of household goods which is lost or destroyed, or partially lost or destroyed, in transit, whether or not that shipper has exercised the rights provided in paragraphs (a) and (b) of this section.

§ 1056.16 Collection of freight charges on shipments transported on more than one vehicle.

(a) Whenever a collect on delivery shipment of household goods, as defined in 49 CFR 1056.1(b)(1), is transported on more than one vehicle the carrier delivering such split or divided shipment shall observe the requirements of paragraphs (a)(1), (2) or (3) of this section in the collection of the charges.

(1) At the option of the carrier, the collection of the charges attributable to the transportation of the portion of the shipment transported on each vehicle may be deferred until all portions of the shipment are delivered; or,

(2) Providing that the charges for the entire shipment have been determined, the carrier may collect at the time of delivery of any portion of the shipment that percentage of the charges represented by the portion of the shipment tendered for delivery; or,

(3) In the event that the charges due the carrier for the transportation of the entire shipment cannot reasonably be determined at the time any portion of the shipment is tendered for delivery, the carrier shall determine and collect the charges for the portion of the shipment being delivered. The total charges assessed by the carrier for the transportation of the separate portions of the shipment shall not exceed the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment being transported on more than one vehicle, the collection of charges as provided in paragraph (a) of this section shall also be in conformity with the requirements of 49 CFR 1056.15.

§ 1056.17 Advertising by motor common carriers of household goods.

(a) Every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in § 1056.1(b)(3), the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Interstate Commerce Commission.

(b) Such certificate or docket number shall be in the following form in every advertisement: "I.C.C. No.———" but shall not include any sub numbers which may have been assigned.

(c) No motor common carrier engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1), or any agent or other representative of such a carrier, shall publish or cause to be published or use

any advertisement as defined in § 1056.1(b)(3), which is false, misleading or deceptive.

§ 1056.18 Preparation and filing of annual performance report.

(a) Minimum Filing Requirement.—Each motor common carrier for household goods as defined in 49 CFR 1056.1(b)(1), which delivers 100 or more interstate shipments to individual shippers as defined in 49 CFR 1056.1(b)(5), during any calendar year shall, on or before March 31 of the following year, cause to be filed with the Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423, a report of the service performed during the report year. The report shall be submitted on Form OCP-101.

(b) Prescribed Annual Performance Report Form

INTERSTATE COMMERCE COMMISSION

OFFICE OF CONSUMER PROTECTION

ANNUAL PERFORMANCE REPORT FOR YEAR ENDED DECEMBER 31, 19—

Carrier's Name ————————————
Carrier's Address ————————————
ICC Number ————————————

PART A

During the year the total number of shipments delivered for each type of shipper was:

1. Individual shipper ..... ———
2. Government Bill of Lading shipper ..... ———
3. Commercial shipper ..... ———

PART B

With reference to shipments delivered for individual shippers as defined in 49 CFR 1056.1(b)(5):

1. The number of shipments delivered upon payment of the amount of a binding estimate (49 CFR 1056.3(a)) ..... ———
2. Percent of the shipments on which a non-binding estimate was furnished for which the final charges for the services included in the estimate did not exceed the amount of the estimate ..... ———
3. Percent of shipments delivered which were picked up on or before the last date for pickup specified in the order for service/bill of lading ..... ———
4. Percent of shipments delivered which were delivered on or before the last date for delivery as specified in the bill of lading contract ..... ———
5. Percent of shipments delivered which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100 ..... ———
6. Percent of shipments delivered which did not result in the filing of a claim in excess of $100 by the shipper within 60 days foliowing the date of delivery for damages and expenses arising out of the delayed pickup or delivery of the shipment ..... ———
7. The average number of days between the date of filing of a claim for property loss or damage or delay in excess of $100 and the date of final settlement of such a claim ..... ———
8. The percent of all claims for amounts in excess of $100 filed for property loss or damage or for damages or expenses incurred as result of delayed pickup or delivery .... ———
   a. Which were resolved through the use of a dispute settlement (arbitration) program maintained or participated in by the carrier ..... ———
   b. Which were not referred to a dispute settlement program and which were concluded after the carrier received legal notice of suit by claimant to recover ..... ———

(c) Instructions for Preparation of Annual Performance Report, Form OCP-101

INSTRUCTIONS FOR PREPARATION

PART A

1. Enter the total number of shipments delivered which were transported for individual shippers.

2. Enter the total number of shipments delivered on Government Bills of Lading. Do not include shipments transported for a freight forwarder.

3. Enter the total number of shipments transported for commerical shippers as defined in 49 CFR 1056.1(b)(6). Include shipments transported for freight forwarders in this total.

PART B

1. Enter the number of shipments delivered on which a binding estimate was furnished on which the final charges were the same as the binding estimate.

2. Enter the percent of the shipments on which a non-binding estimate of costs was furnished which were delivered upon payment of an amount not exceeding the nonbinding estimate.

3. Enter the percent of the shipments entered under Part A item 1 which were picked up on or before the last date for pickup as specified in the order for service, *Include in the computation of the percent all shipments picked up late, regardless of the reason or the party responsible for the delay.*

4. Enter the percent of all shipments entered under Part A item 1 which were delivered on or before the last date for delivered as specified in the bill of lading. *Include in the computation of the percent all shipments delivered late regardless of the reason or the party responsible for the delay.*

5. Enter the percent of the shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for an apparent loss in excess of $100.

6. Enter the percent of shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for damages or expenses in excess of $100 incurred as a result of the delayed pickup and/or delivery of the shipment. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for apparent damages or expenses in excess of $100.

7. Enter the average number of days required to reach a final settlement of all claims for $100 or more relating to the transportation of shipments entered under Part A item 1 arising out of property loss or damage or the delayed pickup and/or delivery of shipments during the report year. For the purpose of this report a claim shall be considered to be a "claim filed" if it meets the criteria set forth in (5) and (6) and shall be considered as being finally settled on the 60th day following the date on which a written offer of settlement is mailed or delivered in person to a claimant unless the offer of settlement is accepted prior to the 60th day or, on the 60th day following the date on which a written denial of liability is mailed or delivered in person to the claimant unless the claimant assents to the denial prior to the 60th day.

8a. Enter the percent of the loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

8b. Enter the percent of loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the year on a date subsequent to the date of which legal notice of suit to recover was received by the carrier.

GENERAL INSTRUCTIONS

1. Data for completion of Form OCP-101 may be obtained by random sampling providing that in every instance the universe sampled is all shipments delivered for individual shippers during the report year or all claims arising out of the transportation of individual shipper shipments which were received or settled, as appropriate, during the report year.

2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.

3. Carriers submitting Form OCP-101 shall retain and make available for review by an authorized Commission employee all working papers, notes and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

[46 FR 16218, Mar. 11, 1981; 46 FR 22594, Apr. 20, 1981]

§ 1056.19 Use of charge card plans.

Motor common carriers of household goods, as defined in 49 CFR 1056(b)(1), may provide in their tariffs for the acceptance of charge cards for

the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check or money order. Payment by charge card shall be considered the same as payment by cash, certified check or money order. Any tariff rule or item permitting the acceptance of charge cards shall identify the charge card plans participated in by the carrier.

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

Subpart A—General Applicability and Definitions

Sec.
1057.1 Applicability.
1057.2 Definitions.

Subpart B—Leasing Regulations

1057.11 General leasing requirements.
1057.12 Written lease requirements.

Subpart C—Exemptions for the Leasing Regulations

1057.21 General exemptions.
1057.22 Exemption for trip leasing between authorized carriers.
1057.23 Exemption for trip leasing specialized equipment.
1057.24 Exemption for trip leasing equipment used in agricultural operations.
1057.25 Recordkeeping for agricultural exemption.

Subpart D—Interchange Regulations

1057.31 Interchange of equipment.

Subpart E—Private Carriers and Shippers

1057.41 Rental of equipment to private carriers and shippers.

AUTHORITY: 49 U.S.C. 304(e) and (f) and 5 U.S.C. 552, 553, and 559.

SOURCE: 44 FR 4681, Jan. 23, 1979, unless otherwise noted.

Subpart A—General Applicability and Definitions

§ 1057.1 Applicability.

The regulations in this part apply to the following actions by motor carriers holding permanent or temporary operating authority from the Commission to transport property:

(a) The leasing of equipment with which to perform transportation regulated by the Commission.

(b) The leasing of equipment to motor private carrier or shippers.

(c) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Commission.

§ 1057.2 Definitions.

(a) *Authorized carrier*—A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of 49 U.S.C. 10921, 10922, 10923, 10928, 10931, or 10932.

(b) *Equipment*—A motor vehicle, straight truck, tractor, semitrailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange*—The receipt of equipment by one motor common carrier of property from another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(d) *Owner*—A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment for a period longer than 30 days, or (3) who has lawful possession of equipment, registered and licensed in any State in the name of that person.

(e) *Lease*—A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.

(f) *Permanent lease*—A lease in which the authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of 30 days or more.

(g) *Trip lease*—A lease in which an authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of time less than 30 days.

(h) *Lessor*—In a lease, the party granting the use of equipment, with or without driver, to another.

(i) *Lessee*—In a lease, the party acquiring the use of equipment with or without driver, from another.

(j) *Sublease*—A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

(k) *Addendum*—A supplement to an existing lease which is not effective until signed by the lessor and lessee.

(l) *Private carrier*—A person, other than a motor carrier, transporting property by motor vehicle in interstate or foreign commerce when (1) the person is the owner, lessee, or bailee of the property being transported; and (2) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(m) *Shipper*—A person who sends or receives property which is transported in interstate or foreign commerce.

(n) *Escrow fund*—Money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

(o) *Detention*—The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment, under circumstances not attributable to the performance of the carrier.

Subpart B—Leasing Regulations

§ 1057.11 General leasing requirements.

Other than through the interchange of equipment as set forth in § 1057.31, and under the exemptions set forth in Subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) *Lease*—There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 1057.12.

(b) *Receipts for equipment*—Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:

(1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt.

(2) When possession of the equipment by the authorized carrier ends, it shall obtain a receipt from the owner.

(3) Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under this subsection.

(c) *Identification of equipment*—The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows:

(1) During the period of the lease, the carrier shall identify the equipment in accordance with the Commission's requirements in Part 1058 of this chapter (Identificaiton of Vehicles). Upon termination of the lease, the authorized carrier shall remove all identification showing it as the operating carrier before giving up possession of the equipment.

(2) Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative.

(d) *Records of equipment*—The authorized carrier using equipment leased under this section shall keep records of the equipment as follows:

(1) If the equipment is being leased for periods of less than 30 days, the authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information

and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Trip leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers.

(2) If the equipment is being leased for periods of 30 days or more, the authorized carrier shall comply with the provisions of paragraphs (d)(1) of this section, but it may keep the required information at its terminals or principal office as part of its records rather than with the leased equipment.

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in Subpart C of these regulations, the written lease required under § 1057.11(a) shall contain the following provisions:

(a) *Parties*—The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) *Duration to be specific*—The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by § 1057.11(b).

(c) *Minimum duration of 30 days when operated by owner*—The period for which the lease applies shall be for 30 days or more when the equipment is to be operated for the authorized carrier by the owner or an employee of the owner.

(d) *Exclusive possession and responsibilities*—(1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Commission, the parties may provide in the lease that the provisions required by paragraph (d)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.

(e) *Compensation to be specified*—The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(f) *Items specified in lease*—The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items.

(g) *Payment period*—The lease shall specify that payment to the lessor under permanent or trip lease to the authorized carrier shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The lease shall clearly specify the delivery documents and other paperwork that must be submitted before the lessor can receive payment.

(h) *Copies of freight bill*—Subject to the right of the authorized carrier to delete the names of shippers and consignees shown on the freight bill, the

lease shall specify that the authorized carrier shall give a copy of the rated freight bill before or at the time of settlement to those lessors whose revenue is based on a percentage of the gross revenue for a shipment. The lease shall clearly specify the right of the lessor, regardless of method of compensation, to examine copies of the carrier's tariff.

(i) *Charge-back items*—The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at time of payment or settlement.

(j) *Products, equipment, or services from authorized carrier*—The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

(k) *Insurance*—(1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to Commission regulations under 49 U.S.C. 10927. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(2) If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

(3) The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(l) *Escrow funds*—If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall

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be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor or all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

(m) *Copies of the lease.*—An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in § 1057.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease.

[44 FR 4681, Jan. 23, 1979, as amended at 45 FR 13092, Feb. 28, 1980]

Subpart C—Exemptions for the Leasing Regulations

§ 1057.21 General exemptions.

Except for § 1057.11(c) which requires the identification of equipment, the leasing regulations in this part shall not apply to:

(a) Equipment used in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations and on railroad billing.

(b) Equipment used in transportation performed exclusively within any commercial zone as defined by the Commission.

(c) Equipment leased without drivers from a person who is principally engaged in such a business.

(d) Any type of trailer not drawn by a power unit leased from the same lessor.

§ 1057.22 Exemption for trip leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier under the following conditions:

(a) The identification of equipment requirements in § 1057.11(c) must be complied with.

(b) The lessor must own the equipment or hold it under a lease of 30 days or more.

(c) The lessor must regularly use the equipment in the service it is authorized by the Commission to perform.

(d) The equipment must be leased for transportation in the direction of a point which the lessor is authorized to serve.

(e) There must by a written agreement between the authorized carriers concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under § 1057.11(b) is given to the lessor until: (i) Possession of the equipment is returned to the lessor and the receipt required under § 1057.11(b) is received by the authorized carrier; or (ii) Possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

§ 1057.23 Exemption for trip leasing specialized equipment.

The requirement in § 1057.12(c) concerning the minimum duration of a lease for equipment with driver, does not apply where:

(a) The equipment is owned by an authorized automobile carrier and is leased or subleased to another authorized automobile carrier for use in transporting motor vehicles.

(b) The equipment is owned by an authorized tank truck carrier and is leased or subleased to another author-

ized tank truck carrier for use in transporting commodities in bulk.

(c) The equipment is dump equipment leased or subleased for use in transporting salt and calcium chloride, in bulk, for ice and snow control purposes during the period from November 1 through April 30 of each year.

§ 1057.24 Exemption for trip leasing equipment used in agricultural operations.

The requirement in § 1057.12(c) concerning the minimum duration of a lease for equipment with driver, does not apply where the authorized carrier complies with the provisions of § 1057.25 and where:

(a) The equipment is leased by the authorized carrier for use in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the place where the equipment is based, and the equipment is that of one of the following:

(1) A farmer or a cooperative association or federation of cooperative associations under 49 U.S.C. 10526(a)(4) or (5).

(2) A private carrier and the equipment is used regularly in the transportation of (i) property referred to in 49 U.S.C. 10526(a)(6), or (ii) perishable products manufactured from perishable property referred to in that section.

(b) The equipment has completed a movement covered by 49 U.S.C. 10526(a)(6) and is leased to the authorized carrier for use next in one of the following:

(1) A loaded movement in any direction.

(2) One or more of a series of movements, loaded or empty, in the general direction of the place where the equipment is based.

(3) A movement described in paragraph (b)(1) of this section and then a movement described in (b)(2) of this section.

[44 FR 17678, Mar. 23, 1979]

§ 1057.25 Recordkeeping for agricultural exemption.

To qualify for the exemption in § 1057.24, prior to leasing the equipment, the authorized carrier shall receive and retain a statement signed by the owner, or authorized representative of the owner, which includes:

(a) Authorization for the driver to lease the equipment for such movements.

(b) Certification that the equipment meets the qualifications in paragraph (a) or (b) of § 1057.24.

(c) Specification of the origin, destination, and the time of beginning and ending of the last movement which brought the equipment within the exemption of § 1057.24.

[44 FR 17678, Mar. 23, 1979]

Subpart D—Interchange Regulations

§ 1057.31 Interchange of equipment.

Authorized common carriers may interchange equipment under the following conditions:

(a) *Interchange agreement*—There shall be a written contract, lease, or other arrangement providing for the interchange and specifically describing the equipment to be interchanged. This written agreement shall set forth the specific points of interchange, how the equipment is to be used, and the compensation for such use. The interchange agreement shall be signed by the parties or by their authorized representatives.

(b) *Operating authority*—The carriers participating in the interchange shall hold certificates of public convenience and necessity which authorize the transportation of the commodities at the point where the physical exchange occurs.

(c) *Through bills of lading*—The traffic transported in interchange service must move on through bills of lading issued by the originating carrier. The rates charged and the revenues collected must be accounted for in the same manner as if there had been no interchange. Charges for the use of the interchanged equipment shall be kept separate from divisions of the joint rates or the proportions of such rates accruing to the carriers by the application of local or proportional rates.

(d) *Identification of equipment*—The authorized common carrier receiving the equipment shall identify

equipment operated by it in interchange service as follows:

(1) The authorized common carrier shall identify power units in accordance with the Commission's requirements in Part 1058 of this chapter (Identification of Vehicles). Before giving up possession of the equipment, the carrier shall remove all identification showing it as the operating carrier.

(2) Unless a copy of the interchange agreement is carried on the equipment, the authorized common carrier shall carry a statement with each vehicle during interchange service certifying that it is operating the equipment. The statement shall also identify the equipment by company or State registration number and shall show the specific point of interchange, the date and time it assumes responsibility for the equipment, and the use to be made of the equipment. This statement shall be signed by the parties to the interchange agreement or their authorized representatives. The requirements of this paragraph shall not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers.

(e) *Connecting carriers considered as owner*—An authorized carrier receiving equipment in connection with a through movement shall be considered to the owner of the equipment for the purpose of leasing the equipment to other authorized carriers in furtherance of the movement to destination or the return of the equipment after the movement is completed.

Subpart E—Private Carriers and Shippers

§ 1057.41 Rental of equipment to private carriers and shippers

Authorized carriers may rent equipment to private carriers and shippers only as follows:

(a) Authorized carriers may rent equipment, with or without drivers, to private carriers or shippers where the vehicles are to be used for transportation which is exempt under 49 U.S.C. 10526 (a)(7) or (b)(1).

(b) Authorized carriers may rent equipment with drivers to private carriers or shippers where their operating authorities specifically allow such service.

(c) Authorized carriers may rent equipment without drivers to private carriers or shippers where the authorized carriers are transporting property wholly for and on the billing of railroads.

(d) Authorized contract carriers may rent equipment without drivers to private carriers and shippers where approval of the rental contracts has been obtained from the Commission.

PART 1058—IDENTIFICATION OF VEHICLES

Sec.

1058.1 Vehicles subject to regulation.
1058.2 Method of identification.
1058.3 Size, shape and color.
1058.4 Vehicles in driveaway service.
1058.5 Passenger vehicles.
1058.6 Use of identification plates prohibited.

AUTHORITY: 49 Stat. 546, as amended, 566, as amended; 49 U.S.C. 304, 324.

SOURCE: 32 FR 20059, Dec. 20, 1967, unless otherwise noted.

§ 1058.1 Vehicles subject to regulation.

Every for-hire motor carrier operating under authority granted pursuant to the Interstate Commerce Act (49 U.S.C., 1 et seq.), shall observe the rules and regulations prescribed in this part respecting each motor vehicle operating under such authority.

§ 1058.2 Method of identification.

There shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, except as otherwise provided in this part respecting vehicles in driveaway service and those used under a continuing interchange or lease arrangement between common carriers of passengers by motor vehicle, the name, or trade name, of the motor carrier under whose authority the vehicle or vehicles is or are being operated, and the certificate, permit, or docket number assigned to such operating authority by the Interstate Commerce Commission. Such certificate, permit, or docket number, or numbers, shall

be in the following form: "I.C.C. ————", but shall not include any sub numbers which may have been assigned. If the name of any person other than the operating carrier appears on the vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required above, and be preceded by the words "operated by". Nothing in the regulations in this part shall prohibit display of such additional identification as is not inconsistent herewith.

§ 1058.3 Size, shape and color.

The display of name and number prescribed in this part shall be in letters and figures in sharp color contrast to the background and be of such size, shape and color as to be readily legible, during daylight hours, from a distance of 50 feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. If desired, display may be accomplished through use of a removable device so prepared as otherwise to meet the identification and legibility requirements of the regulations in this part.

§ 1058.4 Vehicles in driveaway service.

If a removable device is used on vehicles in driveaway service, it either may be affixed on both sides, or, at the rear of the single driven vehicle. In the cases of a combination driveaway operation the removable device may be affixed on both sides of any one of the units comprising the combination, or at the rear of the rear-most unit of the combination.

§ 1058.5 Passenger vehicles.

Sections 1058.1 to 1058.4 shall not apply to motor vehicles used in the transportation of passengers by common carriers when such vehicles are used in providing through transportation of passengers, in regular services, over the authorized routes of two or more of such carriers under a continuing interchange or lease of equipment arrangement between such carriers, if the vehicle owner's name and certificate number is displayed thereon in the manner provided in § 1058.2, and if there shall have been filed with the office of the Regional Director or Directors having jurisdiction over such carriers and posted in each terminal and ticket agency on the involved routes a published schedule of the carriers showing clearly the points or places between which each carrier assumes and bears complete control and responsibility for the operation of the interchanged or leased vehicle.

§ 1058.6 Use of identification plates prohibited.

On and after the effective date hereof, identification plates theretofore issued by the Interstate Commerce Commission shall not be displayed on any motor vehicle operating under authority of the Commission, or otherwise.

PART 1059—EMBARGOES

Sec.

1059.1 Carriers to give public notice of embargoes.
1059.2 Notice of delay in performing service.
1059.3 Carrier's duty to transport unaffected.

AUTHORITY: 49 Stat. 546, as amended; 49 U.S.C. 304; unless otherwise noted.

SOURCE: 43 FR 972, Jan. 5, 1978, unless otherwise noted.

§ 1059.1 Carriers to give public notice of embargoes.

(a) Whenever any motor common carrier of property subject to the Interstate Commerce Act finds that because of a lack of facilities or personnel, or because it is required to give preference and precedence to other traffic legally entitled to such priority, or because of other compelling circumstances not within the control of the carrier, it is or will be unable to perform all authorized transportation services requested of it and that it will be necessary for it temporarily to suspend the offering of service in the transportation of any commodity, commodities, or class of traffic, to or from any territory, point, shipper, consignee, or connecting carrier, or over any route, it shall immediately give

public notice of such fact by a written notice of an embargo, specifying the extent thereof, the date the embargo is to become effective, its duration, if known, and the reasons why the placing of the embargo is necessary.

(b) Immediately upon the issuance of a notice of an embargo as required by paragraph (a) of this section, one copy of such notice shall be mailed to the Bureau of Operations, Interstate Commerce Commission, Washington, D.C. 20423, two copies shall be mailed or delivered to the Regional Director of the Interstate Commerce Commission in the Region where the principal headquarters of the carrier is located, one copy shall be posted for public inspection in each office of the carrier where the embargo is to be made effective, one copy shall be served upon each connecting carrier with whom the issuing carrier interchanges traffic in cases where traffic so interchanged is affected, and, so far as is reasonably practicable in each case, the embargo shall be brought to the attention of interested shippers and consignees.

(c) Except in instances when the notice of an embargo specifies the date of its expiration, a notice of the termination or modification of an embargo shall be issued, posted, and filed by the carrier, and notice of such termination shall be given to interested shippers, consignees, and connecting lines, in the same manner as prescribed for notice of the establishment of an embargo in paragraph (b) of this section.

§ 1059.2 Notice of delay in performing service.

In all instances, other than those specified in § 1059.1, when a motor common carrier of property subject to the Interstate Commerce Act, is unable to perform authorized transportation promptly upon request, it shall notify the person requesting the service of the anticipated delay and the reason therefor, and shall promptly notify the Bureau of Operations, Interstate Commerce Commssion, Washington, D.C., and the Regional Director of the Bureau of Operations, Interstate Commerce Commission, in the Region where the carrier has its principal headquarters, of any inability to perform requested transportation within a reasonable time, and the reason therefor. Upon the termination of the conditions which render the carrier unable to perform desired transportation within a reasonable time, the carrier shall notify the Bureau of Operations and the Regional Director, mentioned above of the changed conditions.

§ 1059.3 Carrier's duty to transport unaffected.

The provisions of §§ 1059.1 and 1059.2 shall not be construed to relieve any carrier of the duty to furnish transportation service, nor to relieve any carrier of the duty to observe all requirements of law and the regulations prescribed by the Commission.

PART 1061—LIMITATION OF SMOKING ON INTERSTATE PASSENGER CARRIER VEHICLES

§ 1061.1 Provision for separate seating for smokers and nonsmokers on interstate passenger carriers by motor vehicle.

(a) All motor common carriers of passengers subject to part II of the Interstate Commerce Act, which desire to permit smoking of cigars, cigarettes, or pipes, shall, where smoking on passenger-carrying motor vehicles is otherwise permitted by law, provide a smoking section, consisting of a number of seats in the rear of the passenger-carrying motor vehicle, not to exceed 30 percent of the capacity of the said vehicle. Except as otherwise permitted under paragraph (b) of this section, smoking of cigars, cigarettes, or pipes shall not be permitted in any portion of the motor vehicle other than the smoking section required by paragraph (a)(1) of this section.

(b) The provisions of paragraph (a) of this section shall not be construed to apply to charter operations performed by motor common carriers of passengers subject to part II of the Interstate Commerce Act.

(c) In the event of any unusual circumstances arising under paragraph (a) of this section, the operator (driver) of the motor vehicle involved (or other carrier employee) may exercise reasonable discretion to the

extent permitted by the carrier, by making minor modifications in the special seating sections established by paragraph (a) of this section in order to assure the comfort of all passengers and the provisions of safe, adequate, and expeditious transportation service.

(Secs. 202, 203, 204, 207, 208, 209, 216, 49 Stat. 543, 546, 552, and 558, as amended; 49 U.S.C. 302, 303, 304, 307, 308, 309, 316)

[36 FR 22579, Nov. 25, 1971, as amended at 41 FR 45843, Oct. 19, 1976]

PART 1063—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.

1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information.
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility.
1063.7 Equipment.
1063.8 Accommodations for handicapped, disabled, blind and elderly.
1063.9 Identification—bus and driver.
1063.10 Relief from provisions.

AUTHORITY: 49 U.S.C. 301 et seq., secs. 304 (a)(1), 304(a)(6), 308(a), 316, 317, 319, 320, and 322, and 5 U.S.C. 553 and 559.

SOURCE: 42 FR 29309, June 8, 1977, unless otherwise noted.

§ 1063.1 Applicability.

(a) The regulations in this part apply to all motor common carriers of passengers subject to Part II of the Interstate Commerce Act which operate over regular routes.

(b) The regulations of this part shall not apply to special operations conducted by motor common carriers of passengers or to charter operations conducted by motor common carriers of passengers, whether such operations are conducted under specific authority, pursuant to the provisions of section 208(c) of the Interstate Commerce Act, or over certificated regular routes.

§ 1063.2 Definitions.

(a) "Carrier" means a motor common carrier of passengers as set forth in 1063.1(a).

(b) "Bus" means a passenger-carrying vehicle used by a carrier in its authorized operations, regardless of the design or seating capacity of the vehicle.

(c) "Facility" means any building or structure provided by or on behalf of a carrier at or near which buses stop to pick up or discharge passengers.

(d) "Terminal" means a facility operated by or used by a carrier, under contract or otherwise, the primary purpose of which is to furnish passengers with services and accommodations in connection with transportation.

(e) "Station" means a facility, other than a terminal, operated by or on behalf of a carrier at a point on its regular routes to accommodate passengers arriving at, or departing from that point in a carrier's regular service.

(f) "Service" means the operation of a bus or buses for the transportation of passengers between authorized points or over authorized routes.

(g) "Commuter service" notwithstanding the provisions of § 1306.0(d) of this chapter, means the transportation of passengers on buses moving wholly between points which are not more than 100 miles apart as measured by air line distances, except where through-bus, connecting, or interline service is provided to or from points more than said 100 miles distant. In determining whether a particular service should be treated as commuter service or not, consideration will be given to whether the service exhibits the usual characteristics of commuter service, such as (but not limited to) provision for reduced fare, multiple-ride and commutation tickets, and peak morning and evening operations.

(h) "Baggage" means the property of a passenger taken with him for his personal use or convenience.

(i) "Restroom" means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebacket, and toilet paper for the use of bus passengers.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During hours of operation at each terminal or station, information shall be provided as to carrier schedules, tickets, fares, baggage, and other services.

(2) Every employee or agent of a carrier who sells or offers to sell tickets, or who provides information concerning tickets and services provided by the carrier, shall be competent to conduct such activities. Each carrier shall insure that its employees and agents are provided with sufficient current information to handle the sale of tickets and impart information properly.

(b) *Telephonic information service.* Every facility where tickets are sold shall provide the traveling public telephonic information, including current bus schedules and fare information when open for the sale of tickets.

(c) *Schedules.* Printed schedules for regular route services shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the regular-route(s) served by the carrier at which such facilities are located or at which bus trips originate or terminate and shall indicate the scheduled arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall accept its unused tickets for refund in accordance with its effective tariffs upon request, at each place where tickets are sold. Refunds must be remitted within 30 days after presentation of the unused ticket.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement has been given of the departure and the boarding point therefore. Such announcement must be given at least five minutes before departure at originating points and at points where the bus is scheduled to stop for more than five minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked baggage.

(2) All baggage checked at a baggage checking counter up to 30 minutes before departure (but not more than one hour before) shall be transported on the same schedule as the ticketed passengers. If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure time shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination.

(3) All baggage checked at the side of the bus during boarding or at alternative locations provided for such purpose shall be transported on the same schedule as the ticketed passengers.

(b) *Baggage security.* All checked baggage shall be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* No carriers shall, by tariff provision or otherwise, totally exempt its liability for any article offered as checked baggage except those articles that have been so exempted by the Interstate Commerce Commission. At every location where baggage is accepted for checking, there shall be promiently posted a notice listing, those articles which have been exempted.

(d) *Express shipments.* Inasmuch as the transportation of package express shipments must be subordinated to the interests of passengers, baggage shall in all cases take precedence over the transportation of express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time not to exceed 30 minutes after arrival at the passenger's destination. If a carrier fails to make checked baggage available within 30 minutes after arrival, it shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage which cannot be located within one hour after the arrival of the bus upon which it is supposed to be transported shall be designated as lost baggage. The passenger shall be notified by the carrier at that time and appropriate tracing forms shall be

furnished to the passenger for completion and filing with the carrier or its agent. Such forms shall be considered the same as a claim in accordance with the provisions of 49 CFR 1005 in the event the baggage is not recovered within 15 days after filing.

(2) Every carrier shall make available at each ticket window and baggage counter a form to be used in tracing lost or misplaced baggage and for filing claims for lost or misplaced baggage. The form shall incorporate all the information necessary for submission of both a tracer and a claim. The form shall be prepared in duplicate and be signed by the passenger and the carrier representative. The carrier or its agent shall receive the signed original of the form, with such documentation and additional information as is necessary, and the claim check, for which a receipt shall be given. The duplicate copy of the form shall be retained by the passenger.

(g) *Settlement of claims.* Carriers shall make immediate and diligent efforts to recover lost checked baggage Notwithstanding the provisions of § 1005.5 of this chapter, if lost checked baggage cannot be located within 15 days, the carrier shall immediately process the matter as a claim. The date of which the tracing form was received by the carrier or carrier's agent shall be considered as the first day commencing a 60-day period in which a claim must be settled by a firm offer of settlement or by a denial. A denial of any such claim shall be in writing and shall contain an explanation for the basis of such denial.

(h) *Unchecked baggage.* In the event unchecked baggage is lost, the passenger may fill out a tracing form and the carrier shall make a diligent effort to recover the baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and will notify the passenger that the baggage will be held on a will-call basis.

[42 FR 29309, June 8, 1977; 42 FR 35160, July 8, 1977]

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants in the form of station personnel, a hired security force, or local police. All terminals shall be regularly patrolled, and every effort shall be made to assure that unauthorized persons do not loiter in terminals or stations and that the safety and security of patrons is not threatened.

(b) *Outside facilities.* At terminals and stations which are closed during hours when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, and information on local accommodations and telephone numbers for local taxi service and police protection.

(c) *Maintenance.* Terminals shall be maintained in a clean and sanitary condition.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules in such manner as to provide adequate service to and from all points they are required to serve. Carriers shall assure themselves that such schedules can be reasonably met, including connections at junction points.

(b) *Continuity of service.* Except as provided in 49 CFR 1042.2(c)(6), no carrier shall make any change in an existing regular-route schedule without first filing a written notice with the Regional Office of the Interstate Commerce Commission in all regions affected by the schedule change. A copy of such notice shall be displayed by the carrier continuously in a conspicuous place in each facility affected and on each bus providing the affected services. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective dates thereof, the reasons for the change, the availability of alternate service, and the name and address of the responsible carrier official or representative to whom passengers may comment and seek information.

(c) *Trip interruptions.* Carriers shall mitigate, to the extent possible, the inconvenience suffered by passengers

whose travel plans are disrupted by the action of the carrier. This mitigation may take the form of bridging a missed connection, providing food, shelter, or alternate transportation.

(d) *Seating and reservations.* Carriers shall provide buses in sufficient numbers to meet the normal travel demands of passengers, including ordinary weekend and usual seasonal or holiday demand. Passengers shall be guaranteed passage and seating, except on commuter services, to the extent reasonably possible.

(e) *Inspection of rest stops.* No carrier shall establish rest stops which have not been inspected by its personnel and found to be in a clean and sanitary condition. Each carrier shall make periodic inspections of all rest stops used by its services to insure that each rest stop is maintained in a clean and sanitary condition.

§ 1063.7 Equipment.

(a) *Temperature control.* All buses used to provide service (except commuter services) subject to this part shall be equipped with operable temperature control equipment capable of maintaining reasonable temperatures.

(b) *Restrooms.* Each bus used to provide service subject to this part with seating for more than 14 passengers (not including the driver), except those in commuter service, shall have a restroom. Such on-board restrooms shall be clean, sanitary and free of offensive odor, and regularly maintained. A bus may be operated without a restroom if reasonable rest stops are made.

(c) *Bus servicing.* Each bus shall be kept clean and sanitary, with all required items in good repair and working order.

§ 1063.8 Accommodations for handicapped, disabled, blind and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance. A guide or seeing-eye dog or other guide dog specially trained for that purpose shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers shall, whenever possible, provide assistance to handicapped, disabled, blind, and elderly passengers, in boarding buses; such assistance when requested shall include advance boarding and seating. Carriers shall provide assistance to such passengers on request in the use of terminal accommodations and baggage service. At all terminals there shall be prominently displayed a notice stating where and from whom such assistance may be obtained.

(c) *Terminal accommodations.* (1) All terminals shall be designed and constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminals which are newly built or substantially renovated after January 1, 1978, shall be constructed or altered in accordance with the minimum standards in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus operated and each driver employed to provide service subject to this part shall be identified in a legible manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* In any situation where compliance with any provision of this part would impose an undue burden on a carrier, that carrier may file a petition with the Interstate Commerce Commission, Washington, D.C., seeking waiver of the applicability of that provision with regard to particular services or (where appropriate) seeking that particular services be treated as commuter services notwithstanding failure to conform to the definition thereof. An original and one copy of any such petition shall be filed with the commission, and the petition shall embrace verified statements setting forth all the evidence upon which the carrier intends to rely in support and justification of its request.

(b) *Notice to the public.* Notice of the filing of any such petiton shall be provided by the carrier to the traveling public for at least 30 days, displayed continuously in a conspicuous place in each facility affected or served by an affected service and on each bus affected. Such notice shall contain the carrier's name and address a clear and concise description of the relief sought and the reasons therefor, and a statement that any interested person may file written comments concerning the relief sought with the Interstate Commerce Commission, Washington, D.C. (with one copy mailed to the carrier) on or before a specific date not earlier than 30 days after the posting of the notice commenced.

PART 1064—NOTICE OF AND PROCEDURES FOR BAGGAGE EXCESS VALUE DECLARATION

Sec.

1064.1 Minimum permissible limitations for baggage liability.
1064.2 Notice of passenger's ability to declare excess value on baggage.
1064.3 Baggage excess value declaration procedures.

AUTHORITY: 49 U.S.C. 1 and 301 et seq. and 5 U.S.C. 553 and 559.

§ 1064.1 MInimum permissible limitations for baggage liability.

(a) Motor common carriers of passengers and baggage subject to 49 U.S.C. 10521 may not publish tariff provisions limiting their liability for loss or damage to baggage checked by a passenger transported in regular route or special operations unless:

(1) The amount for which liability is limited is $250 or greater per adult fare, and

(2) The provisions permit the passenger, for an additional charge, to declare a value in excess of the limited amount, and allow the passenger to recover the increased amount (but not higher than the actual value) in event of loss or damage. The carriers may publish a maximum value for which they will be liable, but that maximum value may not be less than $1,000. Appropriate identification must be attached securely by the passenger to each item of baggage checked, indicating in a clear and legible manner the name and address to which the baggage should be forwarded if lost and subsequently recovered. Identification tags shall be made immediately available by the carriers to passengers upon request.

[46 FR 22899, Apr. 22, 1981]

§ 1064.2 Notice of passenger's ability to declare excess value on baggage.

(a) All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage in excess of a free baggage allowance limitation, shall provide clear and adequate notice to the public of the opportunity to declare such excess value on baggage.

(b) The notice referred to in paragraph (a) of this section shall be in large and clear print, and shall state as follows:

NOTICE—BAGGAGE LIABILITY

This motor carrier is not liable for loss or damage to properly identified baggage in an amount exceeding $---. If a passenger desires additional coverage for the value of his baggage he may, upon checking his baggage, declare that his baggage has a value in excess of the above limitation and pay a charge as follows:

IDENTIFY YOUR BAGGAGE

Under I.C.C. regulations, all baggage must be properly identified. Luggage tags should indicate clearly the name and address to which lost baggage should be forwarded. Free luggage tags are available at all ticket windows and baggage counters.

The statement of charges for excess value declaration shall be clear, and any other pertinent provisions may be added at the bottom in clear and readable print.

(c) The notice referred to in paragraphs (a) and (b) of this section shall be (1) placed in a position near the ticket seller, sufficiently conspicuous to apprise the public of its provisions, (2) placed on a form to be attached to each ticket issued (and the ticket seller shall, where possible, provide oral notice to each ticket purchaser to

read the form attached to the ticket), (3) placed in a position at or near any location where baggage may be checked, sufficiently conspicuous to apprise each passenger checking baggage of its provisions, and (4) placed in a position at each boarding point or waiting area used by the carrier at facilities maintained by the carrier or its agents, sufficiently conspicuous to apprise each boarding passenger of the provisions of the said notice.

[40 FR 1249, Jan. 7, 1975]

§ 1064.3 Baggage excess value declaration procedures.

All motor common carriers of passengers and baggage subject to part II of the Interstate Commerce Act, which provide in their tariffs for the declaration of baggage value in excess of a free baggage allowance limitation, shall provide for the declaration of excess value on baggage at any time or place where provision is made for baggage checking, including (a) at a baggage checking counter until 15 minutes before scheduled boarding time, and (b) at the side of the bus or at a baggage checking counter in reasonable proximity to the boarding area during boarding at a terminal or any authorized service point.

[40 FR 1249, Jan. 7, 1975]

PART 1065—GATEWAYS AND TACKING—IRREGULAR ROUTE MOTOR COMMON CARRIERS OF PROPERTY

§ 1065.1 Gateway elimination.

(a) Where a common carrier by motor vehicle authorized to transport property in interstate or foreign commerce holds separate and unrestricted irregular-route certificated authorities issued by the Interstate Commerce Commission, which authorities have a common point of service (a "gateway") to which a given shipment may be transported under one authority and from which the same shipment may be transported under the other, the carrier is required, upon reasonable request therefor, to furnish through service on the shipment under a combination of the authorities and may do so without transporting the shipment through the common service point or points; *Provided:* (1) That the certificated authorities so utilized were issued to the carrier pursuant to an application proceeding pending before the Interstate Commerce Commission on or before November 23, 1973, (2) that none of the authorities is restricted against such joining, (3) that the most direct highway distance between the points[1] to be served is not less than 80 percent of the highway distance between such points over the carrier's authorized routing through the gateway, (4) that a lawful and appropriate tariff covering the movement via the gateway was on file with the Interstate Commerce Commission on November 23, 1973, or that the carrier had pending an application on the aforementioned date which was subsequently granted, and (5) the carrier follows the procedures prescribed in paragraph (d)(1) of this section.

(b) Except where expressly allowed under paragraph (a) of this section, or on movements of 300 miles or less, or where its certificated authorities specifically authorize such tacking or joinder, a common carrier by motor vehicle authorized to transport property, in interstate or foreign commerce, is prohibited from joining any of its irregular routes certificated authorities on and after the effective date of this regulation. Any common carrier by motor vehicle providing such prohibited service on or before the date this regulation takes effect shall cease such operations on or before the 60th day following the said effective date, unless it files an application for direct-service operating authority pursuant to section 206 of the Interstate Commerce Act on or before the 60th day following the effective date. Such an application may have the support of the shipper or shippers currently served by the carrier applicant, shall be filed and processed in accordance with the procedures pre-

[1] In those cases where a carrier may serve a municipality or unincorporated community pursuant to this rule without the necessity of observing a gateway specified in its certificated authorities; the carrier shall serve all points within its terminal area at such municipality or unincorporated community in accordance with 49 CFR 1049.

scribed in paragraph (d)(2) of this section, and shall be determined in accordance with the requirements of section 207 of the Interstate Commerce Act giving full effect to the applicant's past service and operations through the gateway. Any such carrier filing such an application in good faith may continue to provide such service by observing its gateways or gateway until final disposition of its application proceedings.

(c) The mileages utilized in determining whether the most direct highway distance between the points to be served is not less than 80 percent of the highway distance between such points over the carrier's authorized routing through the gateway, shall be calculated from the point of origin (i.e., the point on the carrier's authorized route where the shipment begins its journey) to the point of destination (i.e., the point on the same carrier's authorized route where the shipment ends its journey) of the shipment or shipments involved.

(d)(1) A carrier seeking to eliminate gateways pursuant to paragraph (a) of this section shall be required to adhere to the following procedures:

(i) File a letter and two copies thereof with this Commission at its offices in Washington, D.C., and one copy with this Commission's field office having jurisdiction over the point at which the carrier is domiciled, describing the gateways to be eliminated (this should include origin, destination, and gateway, applicable mileages, and a suitable map), and attaching either (A) copies of appropriate tariff provisions establishing that such through services were offered by the carrier on November 23, 1973, or (B) a verified statement establishing that the certificated authority enabling operations through the gateway were issued to the carrier pursuant to an application proceeding pending before the Interstate Commerce Commission on November 23, 1973.

(ii) Allow 15 days from the date of publication in the FEDERAL REGISTER of a notice of the carrier's intention to eliminate its gateways and for Commission review of the letter submission. Protests to such notices must be received at the Commission at Washington, D.C., within 10 days of the date of that publication. If the carrier is not otherwise informed by this Commission, operations may commence at the termination of the said 15-day period. This Commission reserves the right to require that a carrier terminate these operations if it should later be discovered that the carrier's operations do not qualify for the benefits of this rule.

(iii) Letter submissions under this rule will not be accepted after June 4, 1974, except in those cases in which the certificated authority to be joined was issued pursuant to an application proceeding pending before the Interstate Commerce Commission on November 23, 1973. In such instances, the carrier shall make such filing within 60 days from the date of issuance of the authority in issue.

(2) A carrier that maintains gateway operations which do not meet the criteria set forth in paragraph (a) of this section may, if it desires to continue to provide such through service to the public, file OPOR-9 applications with this Commission seeking direct-service authority. Such an application shall include:

(i) In bold print in the upper right-hand corner of page 1, the words GATEWAY ELIMINATION.

(ii) (A) A carrier relying on certificated authorities issued to it on or prior to November 23, 1973, shall submit copies of appropriate tariff provisions establishing that such through services were offered by the carrier on November 23, 1973.

(B) A carrier relying on certificated authorities issued to it after November 23, 1973, as a result of an application pending on that date shall present verified statements establishing either (*1*) that the service through the gateway point has been performed (as in the case of the carrier's demonstrated participation in deteriorating interline or interchange service) on November 23, 1973, or (*2*) that a public need for such through service exists.

(iii) An initial verified statement in support of the application. This should include all of the evidence applicant plans to present in the proceeding, including (to the extent pertinent) evidence of the applicant's (or

its established predecessor-in-interest's) past operations via the gateway for the 2 years preceding November 23, 1973, and the relevant matters and evidence set forth in paragraph (d)(2)(ii) of this section. Evidence of supporting shippers need not be presented except as set forth in paragraph (d)(2)(ii)(B) of this section but will be considered and accorded appropriate weight if submitted.

(iv) Such applications must be filed on or before the 60th day following the effective date of these regulations, or within 60 days following the date of issuance of the certificated authorities so to be joined if such authorities are issued to the carrier pursuant to an application proceeding pending before the Interstate Commerce Commission on November 23, 1973, whichever date last occurs. The application will be processed in accordance with the normal procedures of the Interstate Commerce Commission as modified in the FEDERAL REGISTER publication of a notice of the filing of such applications (which shall reflect the procedure outlined in the Commission's report and order in *Gateway Elimination*, 119 M.C.C. 530).

(e) Any motor carrier which has pending on the effective date of these regulations an application for the elimination of a gateway and which desires to utilize the rules set forth above, should notify the Director of the Office of Proceedings of the Interstate Commerce Commission of the pendency of such application and should include the pertinent docket number. Duplicate applications should not be filed.

(49 U.S.C. 301, 302, 304, and 308; 5 U.S.C. 553 and 559)

[39 FR 7794, Feb. 28, 1974, as amended at 39 FR 17444, May 16, 1974]

PART 1067—FITNESS FLAGGING PROCEDURES

Sec.

1067.1 Definitions.
1067.2 Threshold occurrence signaling possible flagging issues.
1067.3 Standard for flagging.
1067.4 Bureau of Investigations and Enforcement participation in application proceedings.
1067.5 Intervention by the Department of Transportation.
1067.6 Flagging keyed to applications only.
1067.7 Show cause hearing.
1067.8 Show cause hearing a temporary bar to issuance of authority.
1067.9 Failure to respond in show cause hearing.
1067.10 Flagging decision.
1067.11 Other flagging procedure initiation.
1067.12 New application filed after flagging procedures initiated.
1067.13 Processing pending applications.
1067.14 Review of show cause and flagging order.
1067.15 Expedition.
1067.16 Adverse fitness finding.
1067.17 Effect of adverse fitness finding on subsequent application.

AUTHORITY: 49 U.S.C. 5, 307, 309, 311, 312(b), 909(c), 909(g), 1010(c); and 5 U.S.C. 552, 553, 559.

SOURCE: 42 FR 15705, Mar. 23, 1977, unless otherwise noted.

§ 1067.1 Definitions.

For the purpose of this part, the following definitions apply—

Fitness: An applicant's present or future willingness or ability to conform to the relevant provisions of the Interstate Commerce Act and the requirements, rules, and regulations of the Interstate Commerce Commission and the Department of Transportation (DOT).

Flagging: The result of a Commission decision that no certificate, permit, license, or authority to consummate a transaction shall issue to an applicant until a determination of that applicant's fitness has been resolved in the selected application proceeding.

Selected application proceeding: The application proceeding in which the fitness issue is being fully developed and formally contested by the Commission's Bureau of Investigations and Enforcement (Bureau) or the Department of Transportation. The Bureau or DOT may participate in the selected application proceeding alone or in an application proceeding consolidated with an investigation or complaint proceeding (the latter two being proceedings to determine the lawfulness or unlawfulness of conduct under the

Interstate Commerce Act or the rules and regulations of the Commission or DOT, but in which the statutory question of fitness is not itself in issue).

Show cause hearing: A separate procedural step, initiated by order at the time the Commission decides to consider the flagging of applications. The purpose of this procedure is to determine whether there exists a nexus (cross-relation) between the fitness questions raised in the selected application proceeding on the one hand, and the fitness issue in any other pending application proceedings, on the other. This hearing, which will be handled on an expedited basis, will afford the applicant an opportunity to show cause why such a nexus does not exist as to any particular pending application and, therefore, why any such pending application should not be flagged.

Flagged applications: Those other pending applications of a carrier in which, after a show cause hearing, a nexus to the selected application proceeding on the issue of fitness has been determined to exist, and in which authority (or permission to consummate the transaction) shall be withheld until the issue of applicant's fitness is finally determined in the selected application proceeding.

§ 1067.2 Threshold occurrence signaling possible flagging issues.

Either of the following occurrences may instigate the flagging procedures set forth in this part:

(a) Institution of a formal Commission investigation into alleged violations of law that reasonably appear to bear on applicant's fitness, willingness, and ability to conduct regulated carrier operations and to conform to the provisions of the Interstate Commerce Act and the requirements, rules, and regulations of the Commission or DOT.

(b) Participation by the Bureau of Investigations and Enforcement or the Department of Transportation to develop a record concerning fitness in an application proceeding seeking operating authority or approval of a transaction under section 5 of the Interstate Commerce Act.

§ 1067.3 Standard for flagging.

Allegations by the Bureau or DOT challenging the fitness, willingess and ability of an aplicant to conform to the provisions of the Interstate Commerce act and the requirements, rules and regulations of the Commission or DOT, as to which there is probable cause for believing that ultimately the applicant will not be able to meet statutory requirements for favorable Commission action on an application for operating authority or for authority to undertake a financial transaction within the meaning of section 5(2) of the Act, including:

(a) Past uncorrected or other significant violations denoting an indifference by the applicant towards lawful standards of behavior, or a pattern of neglect of its duties towards the public that betokens a refusual voluntarily to meet its duties under the Interstate Commerce act or

(b) Flagrant and persistent disregard of pertinent provisions of the Interstate Commerce act or the requirements, rules, and regulations of the Commission or DOT, (rather than, for instance, a *bona fide* difference of opinion or interpretation regarding the applicant's rights).

§ 1067.4 Bureau of Investigations and Enforcement participation in application proceedings.

(a) Upon its determination that it has information tending to put in question the fitness of an applicant, the Bureau of Investigations and Enforcement shall request that it be directed to participate in an application proceeding arising under any of the following sections of the interstate Copmmerce act: 5, 206(a)(6), 207, 209, 211, 212(b) (as made applicable under 49 CFR 1132.3), 309(c), 309(g), or 410(c). This request, which shall be made to the appropriate Division or the Commission, shall include a summary of the evidence which the Bureau proposes to introduce in the context of the entire record. In considering the request, the appropriate Division or the commission shall base its decision to direct the Bureau to participate on fitness upon the standards contained in § 1067.3. Upon a decision

to order the Bureau to participate in an application proceeding, an appropriate order will be entered in the proceeding notifying the parties of the fitness participation.

(b) Upon the institution of a formal investigation proceeding involving issues bearing upon an applicant's fitness or qualifications, willingness and ability to conduct regulated operations, or to conform to the provisions of the Interstate commerce act and the requirements, rules, and regulations of the Commission or DOT, the Commission, a Division of the Commission, or the vice Chairman, as appropriate, will select a pending application (the selected application proceeding) of that applicant and by order direct the Bureau of Investigations and Enforcement to participate on the issue of fitness, if warranted.

§ 1067.5 Intervention by the Department of Transportation.

(a) The Department of Transportation may participate in application proceedings on the issue of an applicant's fitness [by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2] by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the FEDERAL REGISTER. DOT may also petition for leave to intervene in any show-cause hearing by filing a petition and verified written representations during the same 20-day period governing applicant in § 1067.7. In such a situation, applicant may reply thereto within 15 days of such filing. If the Department of Transportation has not petitioned to intervene on the issues of fitness and flagging under the above procedures, its subsequent participation may be authorized at the discretion of the Commission.

(b) This rule does not change in the Department of Transportation's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding, with respect to the activities and practices of a regulated carrier.

§ 1067.6 Flagging keyed to applications only.

Show-cause flagging procedures, if any, will be undertaken only in application proceedings in which the Bureau of Investigations and Enforcement or the Department of Transportation is participating on fitness.

§ 1067.7 Show cause hearing.

When the decision is made to consider the flagging of pending applications, in addition to any order authorizing the Bureau of Investigations and Enforcement or DOT to participate on the issue of fitness, a separate show-cause order will be issued. It will state, in general, the statutes, requirements, rules, and regulations allegedly violated and the general substance of the allegations made and identify by individual docket numbers all of those pending application proceedings in which flagging is to be considered. The order, served and docketed in the usual manner, will require the Bureau of Investigations and Enforcement or the Department of Transportation within 15 days from its issuance to advise applicant, in writing, of the matters of fact and law to be asserted with sufficient particularity to make clear the violations alleged and the nexus alleged to exist between those violations and the application proceeding in which fitness flagging is being considered. Allegations of nexus may include, but are not limited to, such factors as commodity similarity, territorial similarity, the time frame of the alleged violations (whether isolated instances or a pattern of continuing violations), or the seriousness of the alleged violations in light of the authority sought. The order authorizing the Bureau of Investigations and Enforcement or DOT to participate on the issue of fitness or the separate show cause order shall afford applicant an opportunity to submit within 20 days from the expiration of the above-stated notice any verified written representations including facts and arguments tending to show cause why all or any of the applications identified in the order should not be flagged for fitness, and will afford the Bureau of Investigations and Enforcement or the

Department of Transportation 15 days to reply to applicant's representations.

§ 1067.8 Show cause hearing a temporary bar to issuance of authority.

The issuance of a show cause order, or an order authorizing fitness participation with the described show cause requirements does not constitute flagging but shall temporarily bar issuance of authority in any designated application proceeding for a period of no longer than 75 days after the issuance of such order within which period a decision on whether or not to flag the designated applications shall be made. Any extension of time granted to applicant for any filing in the show cause hearing shall not be counted toward the 75-day period.

§ 1067.9 Failure to respond in show cause hearing.

Failure of any applicant subject to a fitness flagging show cause order, or such provision in any order, to file verified written representations by the due date for such filing shall cause the designated application to be flagged and the parties will be so notified. A copy of such notice will be placed in the docket of each of the applications designated as flagged.

§ 1067.10 Flagging decision.

Upon determination that the applicant has shown that the fitness flag should not be raised or has failed to make such showing with respect to any or all of the designated applications the Commission or the appropriate Division thereof will issue an order setting forth its findings with respect to the standard contained in § 1067.3 and specify the particular applications to which those findings and the fitness flag, if any, apply. Commission action on the flagging issue is not a decision on the question of applicant's fitness, and shall not be construed as such.

§ 1067.11 Other flagging procedure initiation.

Should a determination be made that fitness flagging procedures are not warranted and a situation develops at a later stage of any proceeding that suggests that flagging appears appropriate, flagging may be presented as an issue upon formal petition under these same announced procedures.

§ 1067.12 New application filed after flagging procedures initiated.

Where the Bureau of Investigations and Enforcement or the Department of Transportation has been authorized to participate in an application on the issue of fitness flagging procedures have been initiated, a new application by the same applicant filed subsequent to the service date of the snow cause order will by notice be added to the list of designated proceedings in the show cause order unless with the application there is filed a petition, a copy of which is served on the Bureau of Investigations and Enforcement or the Department of Transportation, as appropriate, to have that application excluded therefrom. The petition must set forth applicant's alleged justification for such exclusion. Action on the petition will be taken in the decision determining the application and will be governed by the standard contained in § 1067.3.

§ 1067.13 Processing pending applications.

All pending application proceedings affected by flagging consideration or designated as flagged will move forward toward a final disposition of all other issues, except that of applicant's fitness. Any proceeding that has otherwise reached administrative finality but has not resulted in the issuance of operating rights or, in the case of finance proceedings, authority to consummate the transaction, prior to its designation for show-cause fitness flagging consideration, will by such designation by reopened or held open for reconsideration on the issue of fitness until it is either determined that flagging is not warranted, the fitness issue is resolved, or the fitness flag is removed.

§ 1067.14 Review of show cause and flagging order.

Applicant's filing of verified written representations under the show cause order serves as a prompt and adequate opportunity for Commission review of that order, and applicant's representation may include a prayer for reconsid-

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eration of the issuance of the show cause order, if applicant believes it appropriate. No separately filed petition for reconsideration of the show cause order will be entertained. The decision on flagging will result in issuance of an order by the Commission or a Division thereof in all proceedings where flagging is contested and that order will be subject to petitions for reconsideration under the Commission's rules of practice and will be disposed of as promptly as possible.

§ 1067.15 Expedition.

The selected application will be processed on an expedited basis to the extent consistent with the Commission's other responsibilities.

§ 1067.16 Adverse fitness finding.

Where a pending application has been flagged, an administratively final determination that applicant has failed to show that it is fit in the selected application will provide a sufficient basis for disposition of all flagged applications. Following an administratively final ultimate finding unfavorable to applicant in the selected application proceeding, all flagged proceedings will be denied by appropriate order.

§ 1067.17 Effect of adverse fitness finding on subsequent application.

Following an administratively final fitness determination unfavorable to applicant, fitness participation in any of its subsequently filed applications and flagging will be considered on the same basis as the application of any carrier not previously found unfit in accordance with the procedures announced herein. However, official notice of all prior findings is appropriate and may be found to bear on applicant's fitness.

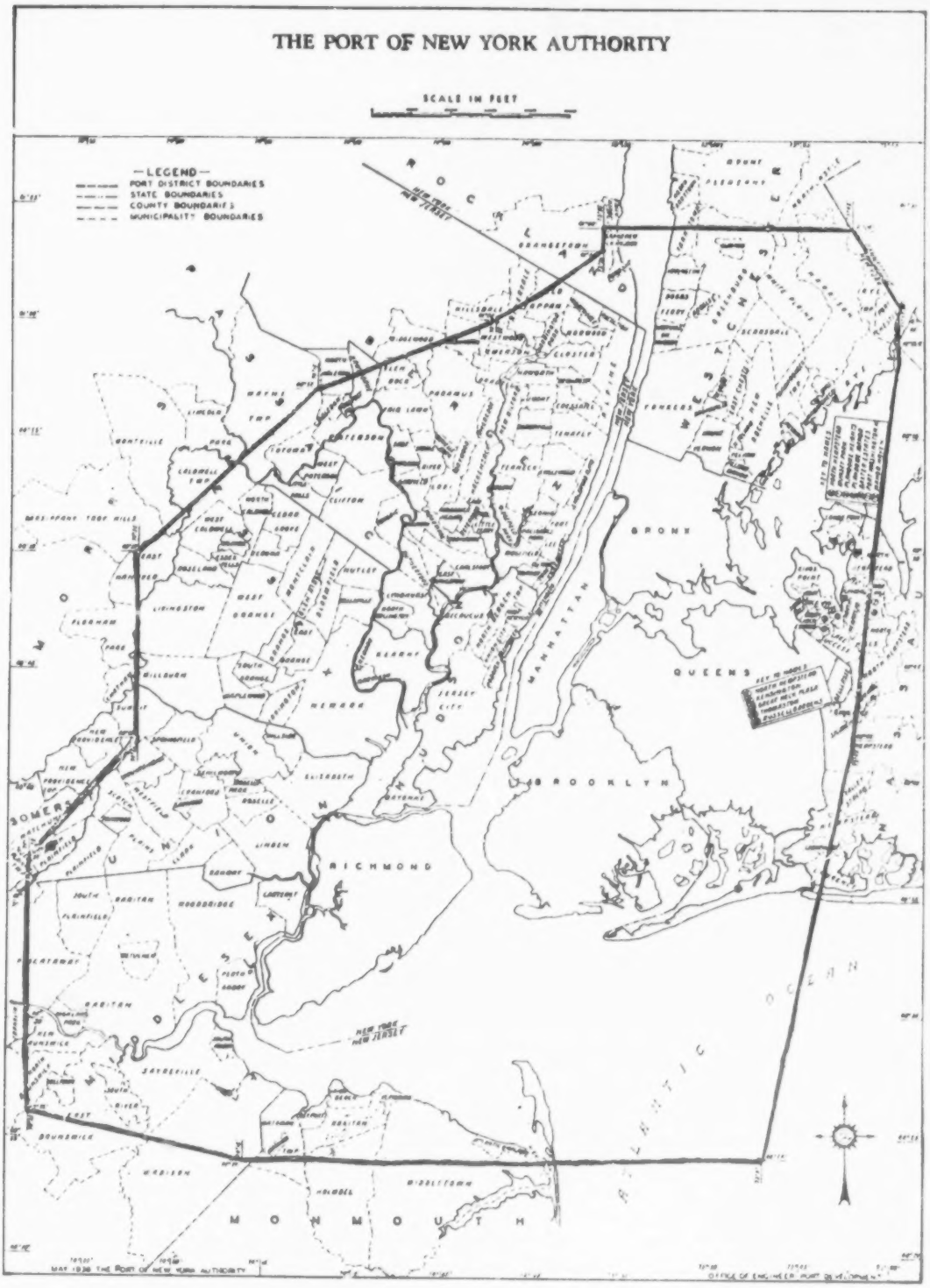
PARTS 1070–1079: WATER CARRIERS—GENERAL

PART 1070—HARBORS

§ 1070.1 Harbor limits.

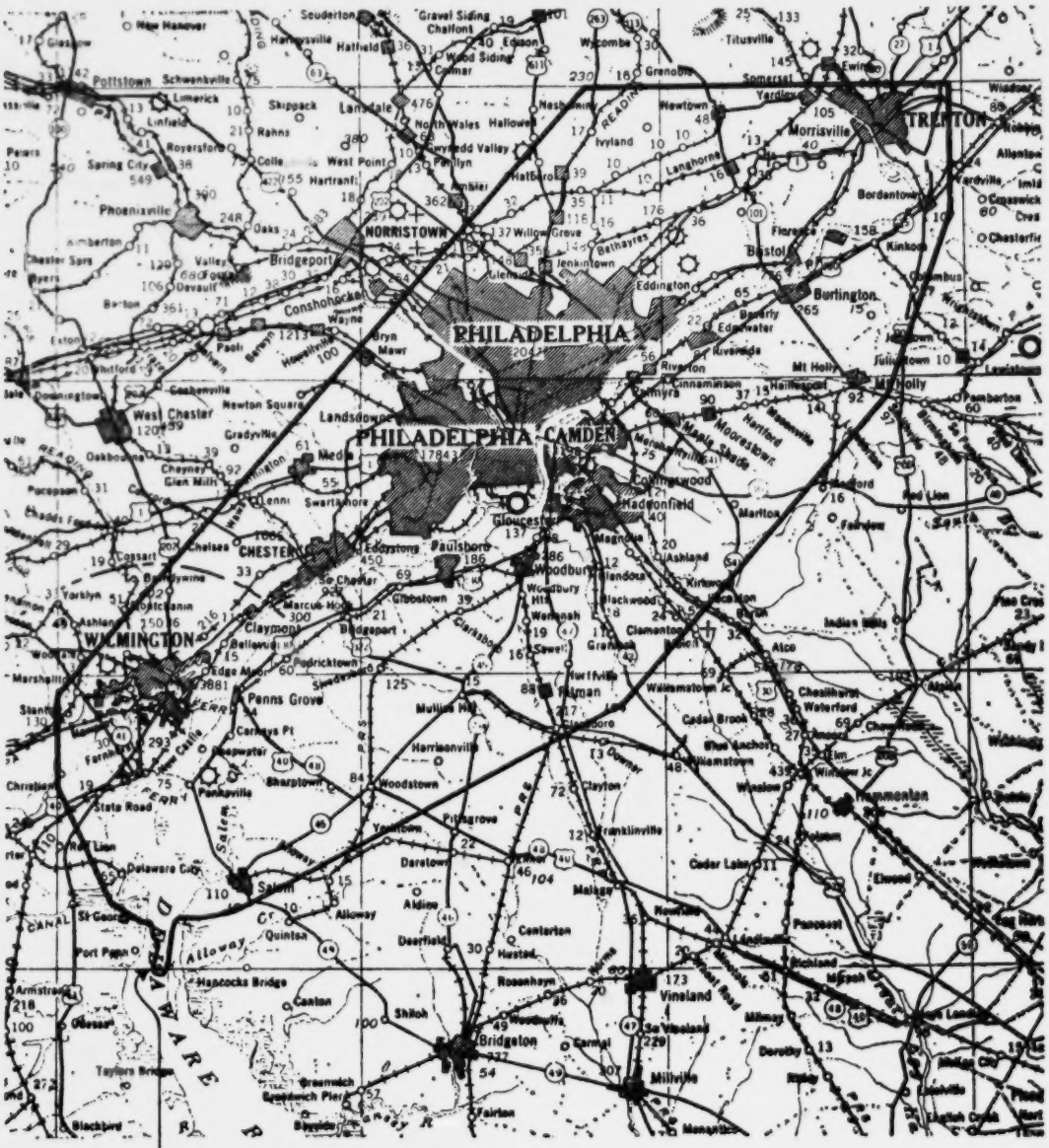
(a) *New York.* For the purpose of administration and enforcement of the Interstate Commerce Act, Part III, the Harbor of New York, N.Y., and harbors contiguous thereto, within which transportation in interstate commerce by water, when such transportation is not a part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, will be exempt from regulation pursuant to section 303(g) of said Act, be, and they are hereby defined to include the following:

The waters within the area over which the Port of New York Authority now has jurisdiction as shown in the following map:


THE PORT OF NEW YORK AUTHORITY
SCALE IN FEET
—LEGEND—
PORT DISTRICT BOUNDARIES
STATE BOUNDARIES
COUNTY BOUNDARIES
MUNICIPALITY BOUNDARIES
BRONX
QUEENS
BROOKLYN
MANHATTAN
RICHMOND
NEWARK
JERSEY CITY
ELIZABETH
SOMERSET
MIDDLESEX
MONMOUTH
OCEAN
ATLANTIC OCEAN
NEW YORK
NEW JERSEY
MAY 1938 THE PORT OF NEW YORK AUTHORITY

(b) *Philadelphia.* For the purpose of administration and enforcement of the Interstate Commerce Act, Part III, the Harbor of Philadelphia, Pa., and harbors contiguous thereto, within which transportation in interstate commerce by water, when such transportation is not a part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, will be exempt from regulation pursuant to section 303(g) of said Act be, and they are hereby, defined to include the following:

The waters within the area enclosed by a heavy black line in the following map:



(54 Stat. 932, 933; 49 U.S.C. 903, 904)
[32 FR 20060, Dec. 20, 1967]

PART 1071—EXEMPTION OF CONTRACT CARRIER OPERATIONS

Sec.
1071.1 Oilfield equipment, Gulf States marshlands.
1071.2 Towage of floating objects.

§ 1071.1 Oilfield equipment, Gulf States marshlands.

Contract carriers by water, insofar as they engage in leasing or chartering vessels for the purpose of transporting machinery, materials, supplies, and equipment incidental to, or used in, the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum, to and from points in the marshland oilfields of Alabama, Florida, Mississippi, Louisiana and Texas be, and they are hereby, exempted from the requirements of Part III of the Interstate Commerce Act until the further order of the Commission.

(54 Stat. 929, 931, as amended; 49 U.S.C. 902, 903, 904)

[32 FR 20061, Dec. 20, 1967]

§ 1071.2 Towage of floating objects.

Transportation by contract carriers of empty vessels to and from shipyards, floating objects such as derricks, dredges, tanks, caissons, pontoons, and other floating objects, other than logs and piling in rafts, of varying shapes, sizes, and drafts which are not designed or used for the carrying of passengers and property, is hereby exempted from the requirements of Part III of the Interstate Commerce Act until the further order of the Commission.

(54 Stat. 929, 931, as amended; 49 U.S.C. 902, 903, 904)

[32 FR 20061, Dec. 20, 1967]

PART 1072—SMALL CRAFT; REMOVAL FROM STATUTORY EXEMPTION

Sec.
1072.1 Definitions; small and large craft.
1072.2 Application of Part III to certain transportation by small craft.

§ 1072.1 Definitions; small and large craft.

The term "small craft", as used in this part, means a vessel or vessels of not more than 100 tons carrying capacity or not more than 100 indicated horsepower, and the term "large craft", as used in this part, means a vessel or vessels of greater carrying capacity and power.

(54 Stat. 931, as amended, 933; 49 U.S.C. 903, 904)

[32 FR 20061, Dec. 20, 1967]

§ 1072.2 Application of Part III to certain transportation by small craft.

The application of the provisions of Part III of the Interstate Commerce Act to transportation as described hereinafter by small craft is hereby declared necessary to carry out the national transportation policy declared in the act and the provisions of said part, except section 303(g) insofar as that section applies to transportation by small craft, shall apply to (a) transportation of property by small craft by common carriers by water which are engaged also in the transportation of property partly by railroad or motor vehicle and partly by water under common control, management, or arrangement; (b) transportation of property by small craft by common or contract carriers by water which are engaged also in the transportation of property by large craft between common points or within a common territory; and (c) transportation of property by small craft by common or contract carriers by water which are engaged also in the transportation of passengers subject to the provisions of Part III of the act by vessels equipped to carry more than 16 passengers.

(54 Stat. 931, as amended, 933; 49 U.S.C. 903, 904)

[32 FR 20061, Dec. 20, 1967]

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1080—CONTRACTS, FORWARDERS—MOTOR COMMON AND CONTRACT CARRIERS

Sec.
1080.1 Filing.
1080.2 Specifications.
1080.3 Amendments.
1080.4 Timing of filing and notice of termination.
1080.5 Public inspection.

AUTHORITY: 49 U.S.C. 10321, 10703, 10749, 10762, 10766(b) and 5 U.S.C. 553.

SOURCE: 45 FR 86740, Dec. 31, 1980, unless otherwise noted.

§ 1080.1 Filing.

All contracts, and amendments thereto, between freight forwarders and motor common carriers, entered into pursuant to section 409 of the Interstate Commerce Act, as amended December 20, 1950, and amendments to contracts continued, shall be in writing, and the freight forwarder party thereto shall file with the Interstate Commerce Commission one true and legible copy thereof on paper of good quality, size 8½" x 11".

[46 FR 22380, Apr. 17, 1981]

§ 1080.2 Specifications.

Contracts shall show:

(a) In the upper right-hand corner, a number in the consecutive series of the forwarder;

(b) The full name and address of each party to the contract, and the ICC number, omitting subnumbers, identifying the operating authority of each;

(c) A description of the transportation and other services to be performed by the motor, rail, or water carrier; the points or area where the service will be performed; the compensation (set forth in dollars or cents per unit of weight or other measure, or as a specific percentage of the otherwise applicable motor or freight forwarder charge. If the latter method is used, the contract must cite the governing tariff by ICC number or by ICC Alpha Code designation);

(d) The effective date of the contract; and

(e) All other terms and conditions agreed upon between the parties to the contract.

§ 1080.3 Amendments.

Amendments to contracts shall show their effective dates, and indicate all superceded provisions. They shall reflect the same series number as the original contract and be consecutively numbered.

§ 1080.4 Timing of filing and notice of termination.

Contracts, amendments, and termination notices shall be filed within 10 days after their effective dates. If a new contract, rather than an amendment, is filed, it shall specifically cancel the old contract. If names of parties are changed but the contract is to be continued, a new contract showing the names of the new parties or a document adopting the old contract and reflecting the new names shall be filed within 30 days.

§ 1080.5 Public inspection.

All contracts and amendments filed with the Commission under the rules and regulations of this part shall be open to public inspection.

PART 1081—BILLS OF LADING

Sec.
1081.1 Through bills of lading to be issued.
1081.2 Conflicting regulations and practices to be discontinued.

§ 1081.1 Through bills of lading to be issued.

All freight forwarders subject to part IV of the Interstate Commerce Act participating in the transportation of property in interstate commerce are required, on or before April 1, 1945, and thereafter, to maintain and apply on all shipments moving under forwarder rates in interstate commerce, rules, regulations, and practices providing for the issuance to the shipper, at the initial point of origin, of a through bill of lading, covering the transportation from initial point of origin to ultimate destination, either

by the freight forwarder on its form, or by a motor common carrier on its form with a notation thereon showing the name of the freight forwarder in whose service the shipment is moving. Where a motor common carrier receives property at initial point of origin and issues a receipt therefor on its form, with a notation thereon showing the name of the freight forwarder in whose service the shipment is moving, the freight forwarder, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the shipment is received at initial point of origin.

(Secs. 403, 404, 413, 56 Stat. 285, 286, 295; 49 U.S.C. 1003, 1004, 1013)

[32 FR 20062, Dec. 20, 1967]

§ 1081.2 Conflicting regulations and practices to be discontinued.

All freight forwarders subject to part IV of the Interstate Commerce Act according as they participate in the transportation of property and interstate commerce are hereby notified and required to cease and desist on or before April 1, 1945, and thereafter to abstain from publishing or applying rules, regulations, and practices affecting the issuance of bills of lading or shipping receipts which are in conflict with the provisions of § 1081.1.

(Secs. 403, 404, 413, 56 Stat. 285, 286, 295, 49 U.S.C. 1003, 1004, 1013)

[32 FR 20062, Dec. 20, 1967]

PART 1083—FILING OF CONTRACTS FOR JOINT LOADING AND TERMINAL SERVICES AND FACILITIES

§ 1083.1 Filing of contracts between freight forwarders for joint loading.

All contracts or agreements between freight forwarders for joint loading and for all terminal services and facilities shall be in writing; and each freight forwarder which is a party to such a contract or agreement on the date this section becomes effective or which shall thereafter enter into such a contract or agreement, immediately shall file with the Commission a verified copy of each such contract in the form in which the same was or may be executed.

(56 Stat. 285, 294; 49 U.S.C. 1003, 1012)

[32 FR 20062, Dec. 20, 1967]

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.
1084.1 Definitions.
1084.2 General requirements.
1084.3 Limits of liability.
1084.4 Surety bonds.
1084.5 Policies of insurance.
1084.6 Insurance and surety companies.
1084.7 Qualifications as a self-insurer and other securities or agreements.
1084.8 Forms and procedure.
1084.9 Acceptance and revocation by Commission.
1084.10 Fiduciaries.

AUTHORITY: 56 Stat. 285; 49 U.S.C. 1003.

SOURCE: 32 FR 20062, Dec. 20, 1967, unless otherwise noted.

§ 1084.1 Definitions.

(a) *Freight forwarder.* The term "freight forwarder" means any person which (otherwise than as a carrier subject to Part I, II, or III, of the Interstate Commerce Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (1) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (2) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (3) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to Part I, II, or III of the act.

(b) *Motor vehicle.* The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails: *Provided, however,* That the following combinations will be regarded

as one motor vehicle, (1) a tractor and trailer or semitrailer when the tractor is engaged in drawing the trailer or semitrailer, and (2) a truck and trailer when both together bear a single load.

(c) *Any one conveyance.* The term "any one conveyance" means any one railroad car, motor vehicle, truck, trailer, semitrailer, or any other vehicle (except a watercraft) used in the transportation of property with respect to which a freight forwarder performs service subject to part IV of the Interstate Commerce Act.

(d) *Any one watercraft.* The term "any one watercraft" means any one vessel or other artificial contrivance of whatever description used or capable of being used, or intended to be used in the transportation by water of property with respect to which a freight forwarder performs services subject to part IV of the Interstate Commerce Act.

(e) *Fiduciary.* The term "fiduciary" shall have the meaning ascribed to it in § 1084.6 (a) of this chapter.

(f) *Other terms.* Where any other terms used in the regulations in this part are defined in section 402(a) of part IV of the Interstate Commerce Act, such definitions to the extent applicable shall be controlling. Where terms are used in the regulations in this part which are neither defined herein nor in said section 402(a), they shall have the ordinary practical meaning of such terms giving due consideration to the purpose of the regulations in this part in relation to the Interstate Commerce Act.

§ 1084.2 General requirements.

(a) *Cargo.* No freight forwarder shall engage or continue in service subject to part IV of the Interstate Commerce Act unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate or insurance, qualifications as a self-insurer or other securities or agreements, in the amounts hereinafter prescribed, for loss of or damage to property with respect to which said freight forwarder performs service subject to part IV of the act.

(b) *Public liability and property damage.* No freight forwarder shall engage or continue in the performance of transfer, collection and delivery service subject to part IV of the Interstate Commerce Act unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts hereinafter prescribed, conditioned to pay any final judgment recovered against such freight forwarder on account of bodily injuries to or death of any person, or loss of or damage to property, except property referred to in paragraph (a) of this section, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its direction and control in the performance of transfer, collection or delivery service.

§ 1084.3 Limits of liability.

The minimum amounts referred to in § 1084.2 are hereby prescribed as follows:

(a) Cargo. Limits for loss of or damage to property with respect to which a freight forwarder performs service subject to Part IV of the Act:

(1) For loss of or damage to property while carried on or resting in any one conveyance other than a watercraft—

(2) For loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place, or while carried on or resting in any one watercraft—$10,000.

(b) Public liability and property damage. Limits for bodily injury to or death of any person, or loss of or damage to property, except property referred to in paragraph (a) of this section:

(1) For bodily injuries to or death of one person—$100,000.

(2) For bodily injuries to or death of all persons injured or killed in any one accident subject to a maximum of $100,000 for bodily injuries to or death of one person—$300,000.

(3) For loss of or damage in any one accident to property, excluding cargo, of others—$50,000.

[32 FR 20062, Dec. 20, 1967, as amended at 39 FR 10254, Mar. 14, 1974; 41 FR 10910, Mar. 15, 1976]

§ 1084.4 Surety bonds.

(a) *Surety companies.* Each surety bond filed with the Commission shall be for the full limits of liability provided in § 1084.3. Only corporations or companies approved by the Commission may qualify to act as surety.

(b) *Other corporations.* A corporation, other than a surety company described in paragraph (a) of this section, seeking to act as surety on any bond must establish to the satisfaction of the Commission its corporate authority and financial ability to assume and discharge the obligations involved, and that it has by written power of attorney appointed some person residing in each State wherein such suretyship is to be undertaken, who shall be a citizen of that State, as its agent upon whom may be served lawful process against the said corporation with respect to any obligation arising out of its undertaking. Duplicate originals of such powers of attorney, duly certified and authenticated, must be filed with the Commission. It shall be the duty of such corporation to maintain agents in each State wherein its surety obligations exist for such time as the surety bond or bonds is or are in effect, and to notify the Commission with respect to any changes in its agency appointments.

§ 1084.5 Policies of insurance.

Each policy of insurance in connection with which a certificate of insurance is filed with the Commission shall be for limits of liability not less than the minimum amounts provided in § 1084.3 and each policy shall be amended by attachment of the appropriate endorsement prescribed, pursuant hereto to insure compliance with this part. Policies of insurance, as amended by such endorsements, covering bodily injury liability, property damage liability, and cargo liability must meet the requirements of § 1084.6 and be written by insurance companies which qualify thereunder.

§ 1084.6 Insurance and surety companies.

(a) *State authority and designation of agent.* No certificate of insurance or surety bond will be accepted by the Commission under these rules and regulations unless written or issued by an insurance or surety company legally authorized to issue policies of the type indicated by such certificate, or surety bonds, as the case may be, in each State in which the freight forwarder is authorized to perform service under Part IV of the Interstate Commerce Act, and such company fully complies with paragraph (b) of this section: *Provided, however,* That in lieu of the licensing requirement with respect to any State except that in which the freight forwarder has its principal place of business or domicile, the insurance or surety company will file with the Commission an agreement stating that with respect to any State requested it will furnish the Commission a designation in writing of the name and address of a person upon whom process issued by or under the authority of any court having jurisdiction of the subject matter may be served in any proceeding at law or equity brought in such State against such company. Such agreement shall be effective so long as the company is authorized to file security with the Commission, and thereafter with respect to any claims arising during the effectiveness of any previously filed certificates or surety bonds.

(b) *Financial resources.* Each insurance and surety company must possess and maintain surplus funds (policyholders' surplus) of not less than $1 million, which minimum will be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where, in the judgment of the Commission, additional evidence with respect to such values is considered necessary: *Provided, however,* That this paragraph shall be effective December 31, 1970, as respects insurance and surety companies which are, on December 31, 1967, authorized to file certificates of insurance and surety bonds with the Commission.

§ 1084.7 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will give consideration to and will approve the application of a freight forwarder to qualify as a self-insurer if such freight forwarder furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such freight forwarder to satisfy its obligations for bodily-injury liability, property-damage liability and cargo liability without affecting the stability or permanency of the business of such freight forwarder.

(b) *Other securities and agreements.* The Commission will also consider applications for approval of other securities or agreements and will approve any such applications if satisfied that the security or agreement offered will afford the security for the protection of the public contemplated by section 403 (c) and (d) of part IV of the Interstate Commerce Act.

§ 1084.8 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements and notices of cancellation must be in accordance with any forms prescribed and approved by the Commission. Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except that in special or unusual circumstances special permission may be obtained for filing certificates of insurance or surety bonds covering periods of less than twelve months duration.

CROSS REFERENCE: For list of forms prescribed, see § 1003.3 of this chapter.

(b) *Procedure.* Certificates of insurance, surety bonds and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full and correct name, including the trade name, if any, of the individual, partnership, corporation, or other person to whom or which the permit under part IV of the Interstate Commerce Act is issued or is to be issued. In the case of a partnership all partners shall be named.

(d) *Cancellation.* Except as provided in paragraph (f) of this section, certificates of insurance, surety bonds and other securities and agreements shall not be cancelled or withdrawn until after 30 days' notice in writing has first been given by the insurance company or companies, surety or sureties, freight forwarder or other party thereto, as the case may be, to the Commission at its office in Washington, D.C., which period of 30 days shall commence to run from the date such notice is actually received at the office of the Commission.

(e) [Reserved]

(f) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the Commission under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, provided the said replacement certificate, bond or other security is acceptable to the Commission under the rules and regulations in this part.

[32 FR 20062, Dec. 20, 1967, as amended at 35 FR 2830, Feb. 11, 1970]

§ 1084.9 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer or other securities or agreements if, in its judgment, such security does not comply with these rules or, for any reason, fails to provide satisfactory or adequate protection for the public.

§ 1084.10 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in certificates of insurance, surety bonds, and notices of cancellation, filed by or on

behalf of freight forwarders under these rules shall be construed to include not only the freight forwarder named in such certificate, bond or notice, but also the fiduciary of such freight forwarder. The coverage of fiduciaries herein provided for shall attach at the moment of succession of such fiduciaries.

(b) *Span of security coverage.* The coverage furnished under the provisions of this rule on behalf of a fiduciary shall not apply subsequent to the effective date of other insurance, or other security, filed with and accepted by the Commission in behalf of such fiduciary. After the coverage provided in this rule shall have been in effect 30 days, it may be canceled or withdrawn within the succeeding period of 30 days by the insurer, the insured, the surety, or the principal upon 10 days' notice in writing to the Commission at its office in Washington, D.C., which period of 10 days shall commence to run from the date such notice is actually received by the Commission. After such coverage has been in effect for a total of 60 days, it may be canceled or withdrawn only in accordance with § 1084.8(d).

PART 1085—FREIGHT FORWARDERS OF HOUSEHOLD GOODS

§ 1085.1 Information for shippers.

Each freight forwarder of household goods shall cause to be given to every prospective shipper the form set forth below and obtain a receipt therefor. If no personal interview is had with a prospective shipper, the forwarder shall cause the form to be delivered to the shipper and obtain a receipt therefor prior to the time the bill of lading is signed. Such receipt shall be preserved as a part of the record of shipment, if the shipment is subsequently accepted by the forwarder. For the application of this section the owner of the household goods to be shipped, or his representative, shall be deemed to be the shipper. The requirements of this section shall not apply in those instances where the forwarder has actual notice that the shipper has previously received the form below.

THE FORM

NAME OF FORWARDER:
ADDRESS:
PHONE NUMBER:

WHOM TO CONTRACT FOR INFORMATION AND/OR ASSISTANCE

This is to inform you that the above-named freight forwarder is licensed by the Interstate Commerce Commission. This forwarder has rates on file with that Commission; is subject to cargo insurance regulations; and is subject to certain claim handling procedures. If you require any assistance in these areas or any other information regarding your move which is not provided by this forwarder or if you desire to register any complaints concerning your move, you may contact the ICC local field office nearest your location (see attached list).

The forwarder is required to give you this form and to receive a receipt for it prior to tendering to you a bill of lading for your signature.————————————————

MANDATORY RECEIPT

In accordance with the rules and regulations of the Interstate Commerce Commission, I, ———————— (name of shipper) of ———————— (address of shipper) have received from

————————————————

(name and address of forwarder) a copy of the Commission's form entitled Whom To Contact For Information And/Or Assistance.

———————— (date)

———————— (signature of shipper)

INTERSTATE COMMERCE COMMISSION FIELD OFFICE LOCATIONS AND TELEPHONE NUMBERS

State	Address	Telephone
Alabama	Birmingham 35203: 2121 Bldg., Room 814, 2121 8th Ave. North..	205-325-3781
Alaska	Anchorage 99510: G-31 Federal Bldg., P.O. Box 1532.	907-272-3922
Arizona	Phoenix 85025: 3427 Federal Bldg., 230 North 1st Ave.	602-261-3834
Arkansas	Little Rock 72201: 2519 Federal Bldg.	50[illegible]-372-4361 Ext. 5821
California	Los Angeles 90012: 7708 Federal Bldg., 300 North Los Angeles St.	213-688-4008

INTERSTATE COMMERCE COMMISSION FIELD OFFICE LOCATIONS AND TELEPHONE NUMBERS—Continued

State	Address	Telephone
California	San Francisco 94102: 13001 Federal Bldg., 450 Golden Gate Ave., P.O. Box 36004.	415-556-5515
Colorado	Denver 80202: 2022 Federal Bldg., 1961 Stout St.	303-837-3162
Connecticut	Hartford 06101: 324 U.S. Post Office, 135 High St.	203-244-2560
District of Columbia.	Washington 20423: ICC Bldg., 12th and Constitution NW.	202-343-4761 Ext. 216
Florida	Jacksonville 32202: 288 Federal Bldg., 400 West Bay St., P.O. Box 35008.	904-791-2011 Ext. 2551 or Ext. 2552
Do	Miami 33155: 105 Cox Bldg., 5720 Southwest 17th St.	305-350-5551
Georgia	Atlanta 30309: Room 300, 1252 West Peachtree St. NW.	404-526-5371, 5307, and 5455
Idaho	Boise 83702: 455 Federal Bldg. and U.S. Courthouse, 550 West Fort St.	208-342-2711 Ext. 2505
Illinois	Chicago 60604: Everett McKinley Dirksen Bldg., Room 1086, 219 South Dearborn St.	312-353-6124 or 312-353-6125
Do	Springfield 62701: 414 Leland Office Bldg., 527 East Capital Ave.	217-525-4075
Indiana	Fort Wayne 46802: 345 West Wayne St., Room 204.	219-422-6131
Do	Indianapolis 46204: Century Bldg., 8th Floor, 36 South Pennsylvania St.	317-633-7465
Iowa	Des Moines 50309: 677 Federal Bldg., 210 Walnut St.	515-284-4416
Kansas	Topeka 66603: 234 Federal Bldg.	913-234-8661 Ext. 401
Do	Wichita 67202: 501 Petroleum Bldg., 221 South Broadway.	316-267-6311 316-267-6311 Ext. 608
Kentucky	Lexington 40505: 222 Bakhaus Bldg., 1500 West Main St.	606-252-2312 Ext. 2511
Do	Louisville 40202: 426 U.S. Post Office, 601 West Broadway.	502-582-5167
Louisiana	New Orleans 70113: T-9038 Federal Bldg. and U.S. Post Office, 701 Loyola Ave.	504-527-6101 or 504-527-6102
Maine	Portland 04112: 305 U.S. Post Office and Courthouse, 76 Pearl St., P.O. Box 167, P.S.S.	207-775-3131

INTERSTATE COMMERCE COMMISSION FIELD OFFICE LOCATIONS AND TELEPHONE NUMBERS—Continued

State	Address	Telephone
Maryland	Baltimore 21201: 814-B Federal Bldg., Charles Center, 31 Hopkins Plaza.	301-962-2560
Massachusetts	Boston 02114: 150 Causeway St., 5th Floor.	617-223-2372
Do	Springfield 01103: 338-342 Federal Bldg., 436 Dwight St.	413-781-2420
Michigan	Detroit 48226: 1110 David Broderick Tower Bldg., 10 Witherill St.	313-226-7245
Do	Lansing 48933: 225 Federal Bldg., 325 West Allegan St.	517-372-1910 Ext. 586
Minnesota	Minneapolis 55401: 448 Federal Bldg. and U.S. Courthouse, 110 South 4th St.	612-725-2326
Mississippi	Jackson 39201: 145 East Amite Bldg., Room 212.	601-948-7821 Ext. 348
Missouri	Kansas City 64106: 600 Federal Bldg., 911 Walnut St.	816-374-5561
Do	St. Louis 63101: 210 North 12th St. Room 1465.	314-622-4103
Montana	Billings 59101: 251 U.S. Post Office.	406-245-6711 Ext. 6261
Nebraska	Lincoln 68508: 320 Federal Bldg. and U.S. Courthouse, 129 North 10th St.	402-475-3395
Do	Omaha 68102: 711 Federal Bldg., 106 South 15th St.	402-221-4644
Nevada	Carson City 89701: 203 Federal Bldg., 705 North Plaza St.	702-882-2085
New Hampshire	Concord 03301: 424 Federal Bldg., 55 Pleasant St.	603-224-1887
New Mexico	Albuquerque 87101: 1106 Federal Office Bldg., 517 Gold Ave. SW.	505-843-2241
New Jersey	Newark 07102: 902 Federal Bldg., 970 Broad St.	201-645-3550
Do	Trenton 08608: 204 Carroll Bldg., 428 East State St.	609-599-3511
New York	Albany 12207: 518 New Federal Bldg., Maiden Lane and Broadway.	518-472-2273
Do	Buffalo 14203: 612 Federal Bldg., 111 West Huron St.	716-842-2068
Do	New York 10007: 26 Federal Plaza, Room 1807.	212-264-1072

INTERSTATE COMMERCE COMMISSION FIELD OFFICE LOCATIONS AND TELEPHONE NUMBERS—Continued

State	Address	Telephone
New York	Syracuse 13202: 104 O'Donnell Bldg., 301 Erie Boulevard West.	315-473-3440
North Carolina	Charlotte 28202: BSR Bldg., Suite 417, 316 East Morehead St.	704-372-0711 Ext. 451 or Ext. 452
Do	Raleigh 27611: 624 Federal Bldg., 310 New Bern Ave., P.O. Box 26896.	919-755-4650
North Dakota	Fargo 58102: P.O. Box 2340, Federal Bldg. and U.S. Post Office, 657 Second Ave. North.	701-237-5771 Ext. 5285
Ohio	Cincinnati 45202: 5514-B Federal Bldg., 550 Main St.	513-684 2975 or 513-684-2976
Do	Cleveland 44199: 181 Federal Bldg., 1240 East 9th St.	216-522-4000 or 216-522-4001
Do	Columbus 43215: 255 Federal Bldg. and U.S. Courthouse, 85 Marconi Blvd.	614-469-5620
Do	Toledo 43604: 313 Federal Office Bldg., 234 Summit St.	419-259-7486 or 419-259-7487
Oklahoma	Oklahoma City 73102: 240 Old Post Office and Courthouse, 215 Northwest 3d St.	405-231-4496
Oregon	Portland 97204: 450 Multnomah Bldg., 319 Southwest Pine St.	503-226-3361 Ext. 3563
Pennsylvania	Harrisburg 17108: 508 Federal Bldg., 228 Walnut St., P.O. Box 869.	717-782-4437
Do	Philadelphia 19102: Room 1600, 1518 Walnut St.	215-597-4449 or 215-597-4453
Do	Pittsburgh, 15222: 2111 Federal Bldg., 1000 Liberty Ave.	412-644-2930
Do	Scranton 18503: 309 U.S. Post Office, North Washington Ave. and Linden St.	717-344-7111 Ext. 324
Rhode Island	Providence 02903: 187 Westminister St., Room 402.	401-528-4306
South Carolina	Columbia 29201: 300 Columbia Bldg., 1200 Main St.	803-253-8371 Ext. 428 or Ext. 429
South Dakota	Pierre 57501: 369 Federal Bldg.	605-224-2812
Tennessee	Memphis 38103: 933 Federal Bldg., 167 North Main St.	901-534-3437
Tennessee	Nashville 37203: 1808 West End Bldg., Suite 803.	615-749-5391
Texas	Amarillo 79101: 1012 Herring Plaza, 317 East 3d St.	806-376-2138
Do	Dallas 75202: Room 13C12, 1100 Commerce St.	214-749-3691
Do	Fort Worth 76102: 9A27 Fritz Garland Lanham Federal Bldg., 819 Taylor St.	817-334-2794
Do	Houston 77002: 8610 Federal Bldg. and U.S. Courthouse, 515 Rusk Ave. Mailing address: P.O. Box 61212, Houston, Tex. 77061.	713-226-4241
Do	San Antonio 78205: 301 Broadway Bldg., Room 206.	512-225-5511 Ext. 4318
Utah	Salt Lake City 84111: 5239 Federal Bldg., 125 South State St.	801-524-5680
Vermont	Montpelier 05602: 52 State St., Room 5.	802-223-6001
Virginia	Richmond 23240: 10-502 Federal Bldg., 400 North 8th St.	703-782-2541
Do	Roanoke 24011: 5104 F. B. Thomas Bldg., 215 Campbell Ave. S.W.	703-343-1581
Washington	Seattle 98101: 6049 Federal Office Bldg., 909 1st Ave.	206-442-5421
West Virginia	Charleston 25301: 3108 Federal Bldg., 500 Quarrier St.	304-343-6181 Ext. 229
Do	Wheeling 26003: 416 Old Post Office Bldg., 12th and Chapline Sts.	304-232-6960
Wisconsin	Madison 53703: 139 West Wilson St., Room 202.	608-256-4441 Ext. 4718
Do	Milwaukee 53203: 135 West Wells St., Room 807.	414-224-3183
Wyoming	Casper 82601: 1006 Federal Bldg., and Post Office, 100 East B St.	307-265-5550

(49 U.S.C. 1010)

[39 FR 3271, Jan. 25, 1974; 39 FR 4784, Feb. 7, 1974]

PARTS 1090–1099—INTERMODAL TRANSPORTATION

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

Sec.

1090.1 Definiton of TOFC/COFC service.
1090.2 Use of TOFC/COFC service by motor and water carriers.

§ 1090.1 Definition of TOFC/COFC service.

Trailer-on-flatcar (TOFC/COFC) service means the transportation on a rail car, in interstate or foreign commerce, of (a) any freight-laden highway truck, trailer, or semitrailer (or container portion of any highway truck, trailer, semitrailer having a demountable chasis) or (b) any empty highway truck, trailer, or semitrailer (or the container portion of any highway truck, trailer, or semitrailer having a demountable chasis) when such empty equipment is being transported incidental to its prior or subsequent use in TOFC/COFC service.

(49 U.S.C. 10321(a) and 10762)

[46 FR 14351, Feb. 27, 1981]

§ 1090.2 Use of TOFC/COFC service by motor and water carriers.

(a) Except as otherwise may be prohibited by these rules, motor common and contract carriers, water common and contract carriers, and freight forwarders may utilize TOFC/COFC service in the performance of all or any portion of their authorized service.

(b) Motor and water common carriers may utilize TOFC/COFC service only if their tariff publications give notice that such service may be utilized at their option, but that the right is reserved to the user of their services to direct that in any particular instances TOFC/COFC service not be utilized.

(c) Motor and water contract carriers may utilize TOFC/COFC service only if their transportation contracts and schedules make appropriate provisions therefor.

(d) Tariffs of motor and water common carriers and contracts and schedules of motor and water contract carriers providing for the use of TOFC/COFC service shall set forth the points between which TOFC/COFC service may be utilized.

(49 U.S.C. 10321(a) and 10762)

[46 FR 14351, Feb. 27, 1981]

PART 1091—PRACTICES OF FOR-HIRE MOTOR COMMON CARRIERS OF PROPERTY PARTICIPATING IN ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.

1091.1 Definition of AMOM Service.
1091.2 Motor carrier operating rights requirement for participation.
1091.3 Tariff notice for AMOM Service and shipper designation feature.
1091.4 Motor carrier tariff inclusions for AMOM Service.
1091.5 Motor carrier bill of lading designation.

AUTHORITY: Secs. 553 and 559 of the Administrative Procedure Act (5 U.S.C.), the national transportation policy (49 U.S.C. preceding section 1) and Parts I, II, III, and IV of the Interstate Commerce Act, and particularly sections 2, 3, 15(3), 15(10), 15(12), 17(3), 204(a)(6), 206(a)(1), 208(b), 210a, 216(c), 216(d), 216(e), 217, 222, 304, 305, 307, 402, 403(a), 404, 406, and 410(a) of the Interstate Commerce Act (49 U.S.C.).

SOURCE: 44 FR 30687, May 29, 1979, unless otherwise noted.

§ 1091.1 Definition of AMOM Service.

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a common carrier by water subject to the Shipping Act, 1916, as amended, (hereafter referred to as the ocean carrier) by an irregular route motor common carrier authorized to transport property in interstate or foreign commerce under authority granted by the Interstate Commerce Commission between points in Alaska, on the one hand, and any points in the contiguous United States, on the other, (hereafter referred to as the motor carrier) for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and a seaport on the West Coast of the contiguous United States, on the other.

§ 1091.2 Motor carrier operating rights requirement for participation.

All motor carriers authorized under irregular route authority to provide service between any point in Alaska, on the one hand, and on the contiguous United States, on the other, may tender empty or loaded equipment to and receive their previously-tendered empty or loaded equipment in AMOM Service from ocean carriers at a seaport in Alaska and a seaport on the West Coast of the contiguous United States.

§ 1091.3 Tariff notice for AMOM Service and shipper designation feature.

Motor carriers may participate in AMOM Service only if their tariff publications give notice that, in the absence of a shipper election, the shipment will be transported over the lower-cost service, whether that be AMOM Service or all-highway service, and that the shipper has the right to elect with regard to any particular shipment that a particular service be utilized.

§ 1091.4 Motor carrier tariff inclusions for AMOM Service.

Tariffs embracing AMOM Service rates or charges, including substituted service directories, if used, shall set forth the underlying operating rights (overhead) relied upon, the service covered by the published rates or charges, the points of substitution between modes of transportation, and the names of the carriers participating therein.

§ 1091.5 Motor carrier bill of lading designation.

Motor carriers utilizing AMOM Service may publish tariffs setting forth different rates or charges for AMOM Service and for all-highway service.

SUBCHAPTER B—PRACTICE AND PROCEDURE

PARTS 1100-1109—RULES OF PRACTICE

PART 1100—GENERAL RULES OF PRACTICE

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1100.5 Definitions. (Rule 5)
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1100.12 Joint board organization and procedures. (Rule 12)

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1100.35 Satisfaction of complaint. (Rule 35)
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1100.38 Protests against applications. (Rule 38)
1100.39 Protests in valuation proceedings. (Rule 39)
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1100.56 Deposition. (Rule 56)
1100.57 Depositions, location, officer, time, fees, absence, disqualification. (Rule 57)
1100.58 Depositions, procedures. (Rule 58)
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1100.84 Evidence; filing of subsequent to hearing; copies. (Rule 84)
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1100.89 Briefs; content and arrangement. (Rule 89)
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1100.102 Enforcement of time limits; disposition of pleadings—Proceedings involving common carriers by rail. (Rule 102)

Subpart B—Special Rules of Practice

1100.200 Rules of practice governing procedures in certain suspension and long and short haul restriction matters.
1100.225 Rules of practice governing the procedures of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, and the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. (Rule 225)
1100.240 Filing of applications under 49 U.S.C. 11344.
1100.241 How to oppose finance applications.
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1100.244 Processing of temporary authority applications filed under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.
1100.245 Rules governing the issuance of Certificates of Registration under section 206(a) of the act. (Rule 245)

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1100.246 Rules pertaining to proceedings for the discontinuance or change of train or ferry service. (Rule 246)
1100.248 Implementation of Pub. L. 91-375, Postal Reorganization Act (Motor carrier licensing provisions). (Rule 248)
1100.249 Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code, 84 Stat. 768, 39 U.S.C. 5208. (Rule 249)
1100.250 Rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought. (Rule 250)
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APPENDIX A—CODE OF ETHICS FOR PRACTITIONERS BEFORE THE INTERSTATE COMMERCE COMMISSION
APPENDIX B—APPROVED FORMS
APPENDIX C—EX PARTE COMMUNICATIONS
APPENDIX D—ATTORNEYS-QUALIFICATION
APPENDIX E—INDEX OF THE SPECIAL RULES CONTAINED IN PARTS 1101-1159
APPENDIX F—NUMBER OF COPIES OF DOCUMENTS (IN ADDITION TO ORIGINAL) TO BE FILED WITH THE COMMISSION
APPENDIX G—COMMISSION HEARING AND APPELLATE PROCEDURE

AUTHORITY: 49 U.S.C. Chapters 1, 8, 12, and 13; 5 U.S.C. 553 and 559.

SOURCE: 42 FR 23806, May 11, 1977, unless otherwise noted.

§ 1100.1 General Information. (Rule 1)

(a) *Scope of rules.* The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act, as amended, and related acts, except insofar as they may be inconsistent with and superseded by requirements governing the practice and procedure in specified categories of proceedings as set out in Parts 1101-1159,[1] or unless otherwise directed by the Commission in any proceeding.

(b) *Applicability.* Subpart A of this part sets forth general rules applicable to all types of proceedings, except to the extent otherwise provided in subpart B hereof which sets forth special rules applicable to particular types of proceedings. Wherever there is any conflict between one of the rules of general applicability in subpart A and a special rule in subpart B, the special rule will govern.

(c) *Reference to and citation of rules.* This part shall be referred to as the "Rules of Practice." Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "§ 1100.61 Request for admission" shall be referred to as "Rule 61." Paragraph (b) of that rule, relating to "Effect of Admission," shall be referred to as "Rule 61(b)."

§ 1100.2 Liberal Construction. (Rule 2)

The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.

§ 1100.3 Information; Special Instructions. (Rule 3)

Information as to procedure under the rules in this part and instructions supplementing these rules in special instances, will be furnished upon written application to the Secretary and Assistant Secretary of the Commission, Washington, D.C. 20423, or by telephone.

Subpart A—Rules of General Applicability

§ 1100.4 Communications and pleadings generally. (Rule 4)

(a) *How addressed.* All communications, including correspondence concerning matters referred to boards, should be addressed to the Commission unless otherwise specifically directed. All communications should clearly designate the docket number, if any, and short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.

(b) *Timely filing required.* Pleadings, requests, or other papers or documents required or permitted to be filed under this part must be received

[1] An index to Parts 1101-1159 is set forth in Appendix E hereto.

for filing at the Commission's offices at Washington, D.C., within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative, provided, however, that if such document is mailed by certified, registered or express mail postmarked at least 3 days prior to the due date, it will be accepted as timely filed.

(c) *Disposition of; when defective.* In any proceeding when upon inspection the Commission is of the opinion that a pleading, document, or paper tendered for filing does not comply with this part or, if it be an application, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the pleading, document, or paper for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) *Objectionable matter.* The Commission may order any redundant, irrelevant immaterial, impertinent, or scandalous matter stricken from any pleading, document, or paper filed with it.

(e) *Ex parte communications prohibited; penalties provided.* Ex parte communications as defined in Appendix C to this part are prohibited and any person violating the prohibitions set out in such Appendix is subject to the penalties therein provided.

§ 1100.5 Definitions. (Rule 5)

As used in this part:

(a) The terms "act" and "part" mean the Interstate Commerce Act and the several parts thereof, respectively. The term "act" also means, unless the context otherwise indicates, any other statute which the Commission administers in whole or in part.

NOTE.—References to parts designated by Roman numerals refer to the Interstate Commerce Act. References to "this part," the rules in this part or to parts designated by Arabic numerals, refer to this Code.

(b) The term "proceeding" shall include: (1) An "informal complaint" filed under Rule 22 or 23 or a "formal complaint" alleging violation of any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, including petitions on the special docket; (2) an "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, or (ii) the consideration of any submission required by law to be made to the Commission; (3) an "investigation" instituted by the Commission; (4) a "rulemaking" proposal instituted by the Commission.

(c) The term "complainant" means a person filing a complaint; "defendant" means a person against whom a complaint is filed; "applicant" means a person filing an application; "respondent" means a person designated in an investigation; "protestant" means a person opposed to the granting of an application, to any tariff or schedule becoming effective or to a tentative valuation; "intervener" means a person permitted to intervene as provided in Rule 70 or 71, and "petitioner" means any person seeking relief other than by complaint, protest or application.

(d) The term "party" shall include all named in paragraph (c) above, or others, permitted or directed by the Commission to participate in a proceeding. It shall not include persons signing certifications of support or witnesses appearing at an oral hearing or submitting verified statements under modified procedure unless such persons are included in the preceding provisions of this Rule, and shall not include persons named in the docket service list merely for the purpose of receiving copies of Commission releases.

(e) The term "pleading" means a complaint, answer, reply, application, protest, written comment, petition to investigate, motion (other than motion orally made at hearing or argument), brief, exceptions, petition, document supplementing oral hearing as described in Rule 86 and all documents filed under modified procedure.

(f) The term "practitioner" means a person authorized by the Commission to appear before it in a representative capacity.

(g) The term "officer," except as a different meaning is indicated in Rules

15(b), 55 to 65, inclusive, 69(a) and 76 (civil and corporate functionaries), includes a Division, Commissioner, administrative law judge, board of employees (called an "employee board" in this part), an examiner or special board composed of State representatives (called a "joint board" in this part), to which a proceeding is assigned or referred for hearing, consideration, or recommendation of an appropriate order. The term "board" means either an employee board or a joint board as the context requires.

(h) The term "initial decision" means a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and an appropriate order. An initial decision made by a Commissioner, an administrative law judge or a joint board will become effective as the order of the Commission in the circumstances described in Rule 91(b).

(i) The term "tentative decision" means a decision proposed by the Commission, which shall embrace the same elements specified for inclusion in initial decisions. A tentative decision will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertainable error the statement therein of the issues and facts ordinarily will be taken by the Commission as the basis of its subsequent decision.

(j) The term "modified procedure" means the procedure specified in Rules 43 to 52, inclusive, which rules provide for the filing and serving of pleadings in proceedings with a view to limiting the matters upon which subsequent oral evidence, if any, will be introduced.

(k) The term "transcript" means a written or electronically recorded statement of all proceedings at an oral hearing.

[42 FR 23806, May 11, 1977, as amended at 42 FR 29311, June 8, 1977]

§ 1100.6 Use of gender and number. (Rule 6)

Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender include the feminine.

Practitioners

§ 1100.7 Register of non-attorney practitioners. (Rule 7)

A register is maintained by the Commission which contains the names of all non-attorneys entitled to practice before the Commission. The register is maintained according to the individual non-attorney practitioner's name and not by corporation or firm name. Corporations and firms are not admitted or recognized as practitioners before the Commission.

(5 U.S.C. 553 and 49 U.S.C. 10308)

[46 FR 17786, Mar. 20, 1981]

§ 1100.8 Attorney at law—qualifications and requirements for practice before the Commission. (Rule 8)

Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, commonwealth or the District of Columbia may represent others before the Commission.

(5 U.S.C. 553 and 49 U.S.C. 10308)

[46 FR 17786, Mar. 20, 1981]

§ 1100.9 Persons not attorneys at law—qualifications and requirements for practice before the Commission. (Rule 9)

(a) *In general.* Any citizen or resident of the United States, not an attorney of law, who shall file an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Commission, successfully complete the practitioners' examination, and show that he possesses the necessary legal and technical qualifications to enable him to render valuable service before the Commission and that he is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.

(b) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice shall be completed in full on the form

provided by the Commission, and shall be addressed to the Secretary of the Commission, Washington, D.C. 20423.

(c) *Additional certificates by applicant's sponsors; hearing on application; abandonment of application.* The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of his qualifications. Upon consideration thereof, if the Commission is not satisfied as to the adequacy of applicant's qualifications, he will be notified thereof by registered mail, whereupon he may request a hearing to prove his qualification. If he presents such a request, the Commission will accord him a hearing. In the absence of a request for hearing within 20 days from receipt of said notice, his application shall be considered as withdrawn.

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by a non-refundable fee of $50. Payment must be made either in cash, or by check or money order payable to the Interstate Commerce Commission.

(e) *Failure to appear for examination.* Except for good cause shown, if an applicant fails to appear at the time and place indicated by the Commission to take the practitioners' examination, the application shall be considered withdrawn.

(f) *Applicant's oath.* No applicant shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will deport himself, as a practitioner before the Commission, uprightly, and according to law; and that he will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission.

§ 1100.10 Initial appearances. (Rule 10)

Practitioners shall file a declaration that they are authorized to represent the particular party in whose behalf they propose to act at the time of making an initial appearance in any proceeding. This requirement will be met by the practitioner entering his name as the representative of an applicant in the appropriate space on an application form; by signing any complaint, petition, protest, reply, or other pleading with a designation following the practitioner's signature that he is the attorney for or other representative of a party therein named; by entering an appearance on the form provided at any hearing; or by filing a letter with the Secretary of the Commission stating that he is authorized to represent a party, whose name and address is given in a particular proceeding which shall be identified. For additional information on appearances, see Rule 69.

§ 1100.11 Suspension, disbarment, or other disciplinary action. (Rule 11)

When it is shown to the Commission that any member of its bar has been suspended or disbarred from practice in any court of record, or has violated any of the Commission's rules, including the code of ethics as set out in Appendix A, or has engaged in other conduct unbecoming a member of the bar of the Commission, he will be subject to suspension, disbarment, or other disciplinary action by the Commission. The member shall be afforded an opportunity to show good cause, within such time as the Commission shall prescribe, why he should not be suspended, disbarred or otherwise disciplined. Upon his response to the order to show cause, and after hearing, if requested, or upon failure to respond within the time prescribed for a response, the Commission shall issue an appropriate order.

Special Rules Respecting Joint Boards

§ 1100.12 Joint board organization and procedures. (Rule 12)

(a) *Organization.* After a joint board has been created it shall select one of its members to act as chairman for all purposes concerning matters which may be referred to it. In the event the member so selected is absent from any meeting of the joint board the members attending shall select one of such members, except as provided in paragraph (b) of this section, temporarily to act as chairman.

(b) *Waiver by Absence of a Joint Board Member.* The failure of a duly

appointed member of a joint board to participate in any hearing after notice thereof on a matter referred to such joint board shall be considered to constitute, as to the matter referred, a waiver of action on the part of the State from which such member was appointed.

(c) *Procedural rulings in case of Disagreement.* If the members of a joint board or a majority thereof in actual attendance at a hearing shall be unable to agree upon the disposition of a procedural question arising therein, the chairman (or acting chairman) of the board shall decide the question and rule or order accordingly.

(d) *Form of joint board's initial decision; service.* In the interest of uniformity the board's initial decision shall conform as nearly as may be practicable to the form of decision issued by the Commission in similar cases. The board's initial decision will be served by the Commission.

(e) *Termination of joint board jurisdiction; subsequent procedure.* The jurisdiction of a joint board over a referred matter shall be terminated in the event of: (1) Service of an initial decision as provided in paragraph (d) of this section; (2) submission of the board's conclusions without a written initial decision; (3) waiver of action in writing by appropriate authority of each State from which a member is entitled to be appointed; (4) failure of all members of the board to appear at the hearing; (5) failure of a majority of the board to agree on substantive matters; or (6) entry of an initial decision is served as provided in paragraph (d) of this section, in which event the subsequent procedure will be as provided in Rules 96, 97, 98, and 99, a referred matter, after termination of joint board jurisdiction, will be decided by the Commission or be made the subject of another officer's initial decision on the record theretofore made or after such hearing or further hearing as may be required.

[42 FR 23806, May 11, 1977, as amended at 42 FR 29312, June 8, 1977]

PLEADING SPECIFICATIONS GENERALLY

§ 1100.13 Typographical specifications generally. (Rule 13)

Except as otherwise provided respecting applications (Rule 36(a)), exhibits (Rule 82(a)), and informal complaints (Rule 22(a)), all pleadings, documents, and papers to be filed under these rules shall be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. To permit binding in covers of uniform size, margins of at least 1½ and 1 inch, respectively, shall be allowed on the left and right margins. Binding shall be on the left margin. Reproduction may be by printing, printing by offset press, multigraphing, or mimeographing, or by any other process, provided the copies are clear and permanently legible. Whiteline blueprints which cannot be reproduced by photography are not acceptable. If directly typewritten, or if in facsimile reproduction of typewriting, the impression may be on both sides of the paper and must be double-spaced, except that long quotations shall be single-spaced and indented. Nothing less in size than Elite type shall be used. If printed, adequate leading and nothing less than 10-point type shall be used, except that 8-point type may be employed in footnotes and in tabular matter where printing limitations so require. If a pleading or brief is in excess of 50 pages (except a pleading under modified or shortened procedure), including cover pages, indexes, and appendices, the impression must be on both sides. Printing by offset press will be accepted: Provided, That the type used is not reduced in size smaller than that required for typewritten documents. Failure to observe these specifications will result in rejection.

§ 1100.14 Copies. (Rule 14)

The original and 6 copies of every pleading, document, or paper permitted or required to be filed under this part shall be furnished for use of the Commission except as a different number is otherwise specified in Appendix F hereto which lists the various pleadings, documents, or papers normally filed with the Commission.

§ 1100.15 Attestation and verification. (Rule 15)

(a) *Practitioner's signature.* If a party is represented by a practitioner each pleading, document, or paper of such party shall be signed in ink by one such practitioner whose address shall be stated. The signature of a practitioner constitutes a certificate by him that he has read the pleading, document, or paper; that he is authorized to file it; that to the best of his knowledge, information, and belief there is good ground for it; that it is not interposed for delay; and that with respect to a complaint he files it with the distinct knowledge and specific consent of complainant. A pleading, document, or paper thus signed need not be verified or accompanied by affidavit except as otherwise provided in these rules.

(b) *When no practitioner's signature.* A pleading, document, or paper not signed by a practitioner must be signed in ink, the address of the signer shall be stated, and the facts alleged in a pleading must be verified under oath by the person in whose behalf it is filed. Signature and verification in such manner must be by a least one complainant if the pleading is a complaint. A pleading, document, or paper filed on behalf of a corporation or other organization authorized to make complaint under the act, which is not signed by a practitioner must be signed in ink, and the facts alleged in a pleading must be verified by an executive officer of such corporation or organization.

§ 1100.16 Affirmation in lieu of oath. (Rule 16)

Whenever under this part an oath is required, an affirmation in judicial form will be accepted in lieu thereof.

§ 1100.17 Pleadings part of record. (Rule 17)

Recitals of material and relevant facts in a pleading filed prior to oral hearing in any proceeding, if separately stated and verified, and unless specifically denied in a counterpleading filed under these rules, shall constitute evidence and be a part of the record without special admission or incorporation therein, but if request is seasonably made, a competent witness must be made available for cross-examination on the evidence so included in the record. Pleadings may contain specific references to or quotation from the tariffs or schedules containing the several rates fares charges, schedules, classifications, regulations or practices alleged to be material. A filing under Rule 40, protests against tariffs or schedules, shall not be considered a pleading for the purposes of this rule.

§ 1100.18 Amendments. (Rule 18)

Leave to file amendments to any pleading will be allowed or denied as a matter of discretion.

§ 1100.19 Time. (Rule 19)

(a) *Computation.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. A half holiday shall not be considered as a holiday. This rule shall apply to the measurement of time forward, as well as backward from a specified date.

(b) When the date designated for filing briefs or other documents is a Saturday, Sunday or a legal holiday in the District of Columbia, that date shall be extended to the next day which is neither a Saturday, Sunday, nor a legal holiday in the District of Columbia. A half holiday shall not be considered as a holiday.

(c) *Modification.* Except as to the maximum time periods provided by law or specified in this part respecting informal complaints seeking damages (Rule 23), any time period prescribed or permitted in this part may, upon request and for good and sufficient cause, be modified by the Commission in its discretion. Requests for extension or modifications of time must be served upon all parties of record at the same time and by the same method of communication as service is made on

the Commission. A request for postponement of date for filing briefs or other documents must be filed not less than 10 days before the due date. Only the original of the request and certificate of service need be filed with the Commission. If granted, the party making the request shall promptly so notify all parties to the proceeding and so certify to the Commission.

§ 1100.20 Service of pleadings and papers. (Rule 20)

(a) *Generally.* Except as otherwise provided in paragraph (b) of this section, or as otherwise provided respecting applications (Rule 36(b)), formal complaints (Rule 32), and informal complaints (Rule 22(b)), every pleading, document, or paper must, when filed, or tendered to the Commission for filing, include a certificate showing simultaneous service thereof upon all parties to the proceeding. Such service shall be made by delivery in person, or by first-class mail, certified mail, registered mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service upon the parties shall be by the same means of communication and class of service employed in making delivery to the Commission: *Provided, however,* That when delivery is made to the Commission in person, and it is not feasible to serve the other parties in person, service shall be made by first-class or express mail. When any party is represented by a practitioner, service upon such practitioner will be deemed service upon the party.

(b) *Exceptions as to letter.* Copies of letters to the Commission relating to oral argument (Rule 93) and subpoenas (Rule 54(a)) need not be served upon other parties to the proceeding.

§ 1100.21 Replies and motions. (Rule 21)

(a) Time for filing. Except that a reply to a reply is not permitted and except as otherwise provided in these rules, an adverse party may file and serve a reply or motion addressed to any pleading permitted under the rules in this part within 20 days after the filing of such pleading with the Commission.

(b) *Replies to administrative appeals.* A reply to an administrative appeal filed under Rules 97 and 98 seeking a change in a decision, order, or requirement may be filed and served within 20 days after the final date for filing such administrative appeals.

(c) The original of the reply or motion should be accompanied by the same number of copies as required respecting the pleading to which the reply or motion is addressed.

COMMENCEMENT OF PROCEEDINGS

§ 1100.22 Informal complaints not seeking damages. (Rule 22)

(a) *Form and content.* Informal complaint may be by letter or other writing, and will be serially numbered and filed as of the date of its receipt. No form of informal complaint is suggested, but in substance the letter or other writing (original and one copy shall be filed) must contain the essential elements of a formal complaint as specified in Rules 26 and 28. It may embrace supporting papers.

(b) *Correspondence handling.* If the informal complaint appears to be susceptible of informal adjustment, a copy or a statement of the substance thereof will be transmitted by the Commission to each person complained of in an endeavor to have it satisfied by correspondence and thus obviate the filing of a formal complaint.

(c) *Discontinuance without prejudice.* A proceeding thus instituted on the informal docket is without prejudice to complainant's right to file and prosecute a formal complaint, in which event the proceeding on the informal docket will be discontinued.

§ 1100.22a Special procedures for dealing with unlawfully established tariffs or rates.

(a) *Scope of special rules:* (1) These special rules govern the filing and processing of complaints that allege that a tariff has been unlawfully established in violation of a provision of the Interstate Commerce Act, the Commission's tariff regulations (49 CFR 1300 *et seq.*), or orders of the Commission or a court.

(2) These rules apply only to an unlawfully established tariff that would have been subject to rejection had the violation been detected before the tariff became effective.

(3) These rules do not apply to complaints alleging substantive violations, such as unreasonableness, undue preference, prejudice or discrimination.

(b) *Definition of unlawfully established tariff:* For the purposes of these rules a tariff is unlawfully established if it does any of the following: (1) Fails to give proper statutory notice; (2) omits or uses symbols improperly; (3) contains typographical errors that prevent proper tariff application; (4) contains erroneous cancellation(s); (5) violates the Commission's tariff regulations, statutory provisions of the Interstate Commerce Act, or orders of the Commission or a court; (6) purports to change rate schedules that have been in effect less than 30 days; and (7) contains duplicating rate schedules.

(c) *Form and content of complaint:* (1) While no special form of complaint is required, the complaint must contain information that specifically identifies the tariff in issue by name, number, publishing official, effective date and item number.

(2) The complaint must set out all the facts that the complainant believes demonstrate that the tariff has been unlawfully established.

(d) *Answer and reply:* (1) The issuing carrier or publishing agent may answer the complaint in writing not later than 10 days after the filing of the complaint with the Commission.

(2) The complainant may file a written reply not later than 10 days after the filing of the answer with the Commission.

(e) *Processing of complaints:* (1) Complaints will be serially numbered as filed.

(2) After reviewing the challenged tariff and the pleadings, the Tariff Integrity Board will make necessary findings and determine whether the tariff has been unlawfully established in violation of the Interstate Commerce Act, the Commission's tariff regulations, or a Commission or court order.

(3) If the Tariff Integrity Board finds that a tariff has been unlawfully established, it may enter an order striking the tariff from the files. Unlawfully established tariff matter is invalid and may not be applied for services performed prior to, on, or after the date of service of the Tariff Integrity Board's decision.

(4) An administrative appeal of the Tariff Integrity Board's decision may be taken, as appropriate, pursuant to Rules 96 and 98 of the rules of practice (49 CFR 1100.96 and 98). In accordance with rule 98(b)(6) of the rules of practice (49 CFR 1100.98(b)(6)), the Board's decision will be stayed automatically pending the Commission's action on appeal.

(5) If there is a disputed issue of material fact, the Tariff Integrity Board will refer the matter to the Commission for handling under the formal complaint procedure (49 CFR 1100.24 *et seq.*).

(f) *Time limits:* (1) A complaint must be filed within 60 days of the tariff's effective date in order to be considered under these special rules.

(2) Complaints filed more than 60 days after a tariff's effective date will be handled under, and must comply with, the Commission's formal complaint procedures (49 CFR 1100.24, *et seq.*).

(3) Requests for extensions of time to file answers or replies will not be granted except in extraordinary circumstances.

(g) *Miscellaneous provisions:* (1) All pleadings (complaint, answer, reply) must comply with the attestation and verification procedures of Rule 15 of the rules of practice (49 CFR 1100.15).

(2) All pleadings should be addressed to the Secretary, Interstate Commerce Commission, Attention: Tariff Integrity Board, Washington, D.C. 20423.

(3) The complainant shall serve a copy of its complaint and reply, if any, on the issuing carrier or publishing agent.

(4) The issuing carrier or agent shall serve a copy of its answer on the complainant.

(5) All pleadings shall include a statement certifying that a copy of the pleading has been served on other parties.

[44 FR 58514, Oct. 10, 1979, as amended at 45 FR 68946, Oct. 17, 1980]

§ 1100.23 Informal complaints seeking damages. (Rule 23)

(a) *Actual filing required.* Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.

(b) *Content.* An informal complaint seeking damages, when permitted under the act, must be filed within the statutory period, and should contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint should state: (1) That complainant makes claim for damages, (2) the name of each individual seeking damages, (3) the names of defendants against which claim is made, (4) the commodities the rate applied, the date when the charges were paid, by whom paid, and by whom borne, (5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery, (6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement, and (7) the nature and amount of the injury sustained by each claimant.

(c) *Statement of prior claim.* If a complaint filed under paragraph (b) or (e) of this section contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the Commission, reference to such complaint must be given.

(d) *Copies.* The original of an informal complaint seeking damages must be accompanied by copies in sufficient number to enable the Commission to transmit one to each defendant named.

(e) *Special-docket proceedings.* Where the act provides for an award of damages for violation thereof and a carrier is willing to pay them, or to waive collection of undercharges, petition for appropriate authority should be filed by the carrier on the special docket in the form prescribed by the Commission. Such petition, when not filed in connection with an informal complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer thereto admitting the matters stated in the petition. If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a statement setting forth the facts may be filed by the carrier within the statutory period. Such statement will be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute.

(f) *Six months' rule.* If an informal complaint seeking damages (other than a Special Docket petition) cannot be disposed of informally or is denied or is withdrawn by complainant from further consideration, the parties affected will be so notified in writing by the Commission. Special Docket petitions will be either granted or denied by the entrance of an order. Except as authorized in Rule 225 of the Commission's Special Rules of Practice, the matter in the complaint or petition will not be reconsidered unless, within six months after the date the notice is mailed or the order is served, either a formal complaint as to the matter is filed or it is informally resubmitted on an additional-fact basis. A filing or resubmission will be deemed to relate back to the date of the original filing, but reference to that date and the Commission's file number must be made in the resubmission, or in the formal complaint filed. If the matter is not so resubmitted, or included in a formal complaint, as provided in this section, complainant will be deemed to have abandoned the complaint and no complaint seeking damages based on the same cause of action will thereafter be placed on file or considered unless itself filed within the statutory period.

(49 U.S.C. 10321)

[42 FR 23806, May 11, 1977, as amended at 44 FR 12426, Mar. 7, 1979]

§ 1100.24 Formal complaints; copies. (Rule 24)

(a) *Generally.* The original of each formal complaint, amended or supplemental formal complaint, or cross complaint, must be accompanied by copies in sufficient number to enable the Commission to serve one upon each defendant, including each receiver or trustee, and retain six copies in addition to the original

(b) *Provision for State Authorities.* If complaint is made under Part II of the act, or respecting State-made rates (Rule 28(b)), sufficient copies in addition to those required under paragraph (a) of this section shall be furnished to permit the Commission to supply one to the appropriate authority in each of the States included in the scope of the complaint.

§ 1100.25 Formal complaints; joinder. (Rule 25)

(a) *Causes of Action.* Two or more grounds of complaint concerning the same principle, subject, or state of facts may be included in one complaint, but should separately be stated and numbered.

(b) *Complainants.* Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and concern substantially the same alleged violation of the act and a like state of facts.

(c) *Defendants.* If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the act participating therein, and against which an order is sought, should be made defendants. If complaint is made of a classification or any provision thereof, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination.

(d) *Correct designation of Parties.* The unabbreviated names of all parties complainant and defendant must be stated correctly.

§ 1100.26 Formal complaints; allegations generally. (Rule 26)

A formal complaint should be so drawn as fully and completely to advise the parties defendant and the Commission in what respects the provisions of the act have been or are violated or will be violated, and should set forth briefly and in plain language the facts claimed to constitute such violation. If two or more sections or subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement should be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done by reference or otherwise without undue repetition.

§ 1100.27 Formal complaints; when damages sought. (Rule 27)

A formal complaint that includes a request for an award of damages should contain the information specified for an informal complaint seeking damages (Rule 23, paragraphs (b) and (c)).

§ 1100.28 Formal complaints; discrimination, preference, and prejudice. (Rule 28)

(a) *Generally.* A complaint that alleges the act is violated because of an undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, or unjust discrimination should specify clearly the particular elements stated in the act as constituting such violation, and the facts which complainant relies upon to establish it. Such elements may include a special rate, rebate, drawback, or other device; and a particular person, company, firm, association, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic.

(b) *State-made rates.* A complaint that brings in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, upon the ground that it violates provisions of the act which prohibit undue or unreasonable advan-

tage, preference, or prejudice as between persons or localities in intrastate commerce and persons or localities in interstate or foreign commerce, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, should bring in issue the justness and reasonableness of the rate, fare, charge, classification, regulation, or practice applicable to the interstate or foreign commerce involved in such complaint. Such complaint should also bring in issue the question as to what should be the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice that should be established so as to remove any such advantage, preference, prejudice, or such unjust discrimination.

§ 1100.29 Formal complaints; other specifications. (Rule 29)

(a) *Tariff or schedule references.* The several rates, fares, charges, schedules, classifications, regulations, or practices on which complaint is made should be set out by specific reference to the tariffs or schedules in which they appear, whenever that is practicable.

(b) *States in which transportation occurs.* A formal complaint under Part II of the act should specifically name the States in and through which the transportation which gives rise to the complaint is performed.

(c) *Hearing place.* A formal complaint should be accompanied by a statement requesting modified procedure or specifying the place at which hearing is desired.

§ 1100.30 Formal complaints; prayers for relief. (Rule 30)

(a) *Generally.* A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Specific prayer for damages.* Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.

§ 1100.31 Amended and supplemental formal complaints. (Rule 31)

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants.

§ 1100.32 Service of formal and cross complaints. (Rule 32)

The Commission will serve formal complaints. It will also serve supplemental, amended, and cross complaints and specific amendments to all complaints when it has granted leave to file such pleadings. Such service will be made personally upon a carrier or freight forwarder or upon an agent thereof designated for purposes of service, or by mail addressed to the carrier or freight forwarder or to the agent thereof at the address filed. If no agent has been designated, service may be made by posting in the Office of the Secretary of the Commission, and if the defendant be a carrier subject to Part II of the act, by also posting in the Office of the Secretary or clerk of the motor carrier regulatory board of the State wherein the motor carrier maintains headquarters. If the complaint involves only the lawfulness of rates, fares, charges, classifications, or practices, service in the manner indicated in the third sentence of this section may be made upon an attorney in fact of a carrier or freight forwarder who has filed a tariff or schedule on behalf of such carrier or freight forwarder, but such service will not be made upon a carrier subject to Part I of the act unless such carrier has failed to designate an agent for service in the city of Washington.

§ 1100.33 Answers and cross complaints to formal complaints. (Rule 33)

(a) *Generally.* An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It must be drawn so as fully and completely to advise the parties and the Commission of the nature of the defense, including, if a departure from the requirements of section 4(1) of the act is involved, the number of the particular application or order, if any, which protects such departure; and must admit or deny specifically and in detail each material allegation of the pleading answered. An answer may enbrace a detailed statement of any counter-proposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show clearly the names of all defendants joining therein, and their concurrence.

(b) *Cross complaints.* A cross complaint, alleging that other persons, parties to the proceeding, have violated the act or requirements established pursuant thereto, or seeking relief against them under the act, may be tendered for filing by a defendant with its answer.

(c) *Time for filing; copies.* Unless otherwise directed by the Commission, an answer to a complaint should be filed within 20 days after the day on which the complaint to which answer is filed was served. The original and six copies of an answer shall be filed with the Commission.

(d) *When issue joined.* If any defendant answers or fails to file and serve an answer within the period specified in paragraph (c), issue thereby is joined as to such defendant.

§ 1100.34 Motions to dismiss or to make more definite and certain. (Rule 34)

(a) *As to complaint.* Defendant may file with his answer, or with his statement under modified procedure, a motion that the allegations in the complaint be made more definite and certain, such motion to point out the defects complained of and details desired. Defendant may also file with his answer a motion to dismiss a complaint because of lack of legal sufficiency appearing on face of such complaint.

(b) *As to answer.* No replication to the answer shall be filed, but any party may file, within 10 days after the filing of an answer, or in the case of modified procedure, complainant may file with his statement in reply, a motion that the answer, or defendant's statement, as the case may be, be made more definite and certain, such motion to point out the defects complained of and the details desired.

§ 1100.35 Satisfaction of complaint. (Rule 35)

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

§ 1100.36 Applications, forms and instructions. (Rule 36)

An application filed with the Commission shall be prepared in accord with and contain the information called for in the form of application, if any, prescribed by the Commission, or any instructions which may have been issued by the Commission with respect to the filing and service of an application.

§ 1100.37 Applications; notice. (Rule 37)

Appropriate notice of the filing of an application will be given by the applicant or by the Commission to the States, to State authorities, or to other persons as may be required by the form or instruction or by the act.

§ 1100.38 Protests against applications. (Rule 38)

(a) *Content.* A protest against the granting of any application shall set forth specifically the grounds upon which it is made and contain a concise statement of the interest of protestant in the proceeding.

(b) *When filed.* Any protest shall be filed with the Commission promptly

after the application is filed. If the proceeding is one respecting which the Commission has issued a notice advising the public of the filing of the application, the protest shall be filed within the time specified in such notice.

(c) *Copies; Service.* A protest filed under this section shall be served upon applicant and, unless otherwise specified in the public notice, the original and six copies of the protest shall be filed with the Commission.

(d) *When rule disregarded.* An application may be set for hearing without awaiting the filing of a protest or of a reply thereto, and also may be disposed of without regard to the prior paragraphs of this section unless the act provides that the particular application may be granted only upon hearing.

§ 1100.39 Protests in valuation proceedings. (Rule 39)

A protest of a tentative valuation shall contain a concise statement of the essential elements of protest with particular reference to the matters in the tentative valuation concerning which protest is made and shall include a statement of the changes therein desired by protestant. When practicable, each object of protest should be set up as a separate item in a separately numbered paragraph. Each item of protest against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When protestant claims that property owned or used has been omitted, a full description of such property and its location must be included in the protest.

§ 1100.40 Protests against applications. (Rule 40)

(a) *Content.* The protested tariff or schedule sought to be suspended should be identified by making reference to the name of the publishing carrier, freight forwarder, or agent, to the Interstate Commerce Commission number, and to the specific items or particular provisions protested and to the effective date of the tariff or schedule. Reference should also be made to the tariff or schedule, and the specific provisions thereof, proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful, and state what protestant offers by way of substitution. Such protests will be considered as addressed to the discretion of the Commission. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) When filed: Protests against, and requests for suspension of, tariffs or schedules filed under the act will not be considered unless made in writing and filed with the Commission at Washington, D.C. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c) and (g) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which event the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents: *Provided, however,* That protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, shall reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

(c) *Motor Carrier Tariff Bureau Filings.* When motor common carrier tariff bureaus file schedules of pro-

posed general increases in rates and charges, or of proposed rate restructurings subject to the special procedures adopted in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324 (1971), and set forth in Part 1104 of this subchapter, protests thereto shall reach the Commission at least 22 days before the published effective dates of those schedules. To assure consideration, replies to protests should reach the Commission no later than 14 days before the effective date of the protested schedules. All statements shall be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission.

(d) *Copies; Service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, an original and 11 copies of every protest or reply filed under this section shall be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of each protest, except as provided in paragraph (e) of this section, or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested. These pleadings should be directed to the attention of the Suspension Board.

(e) *Passenger fare increases.* The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission. Requests for suspension of changes in rail passenger fares must include a verified (notarized) complaint.

(f) *Reply to Protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided: *Provided, however,* That a reply to protest against a tariff applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, shall be filed with the Commission not more than 5 days after the protest is filed.

(g) *Special Requirements for protests against revisions to rail rates and charges and replies thereto.* (1) Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers, or their publishing agents on 20 days' notice under the provisions of 49 U.S.C. 10762(c)(3) must reach the Commission at least 10 days before the proposed effective date of the protested matter. When the protested matter is filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the protest or requests for suspension must reach the Commission at least 5 days before the proposed effective date of the protested matter. (2) Protests against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers or their publishing agents that result in revisions of rates or charges shall also include a verified statement containing specific facts showing: (A) It is substantially likely that the protestant will prevail on the merits pursuant to any applicable provisions of the law; (B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and (C) because of the peculiar economic circumstances of the protestant, investigation of the rate (subject to a refund by the carrier should the rate subsequently be found unlawful) will not protect the protestant. The burden is on the protestant to prove the matters described in (A), (B) and (C) immediately above. (3) Where protestants allege that a rate is unreasonably high in violation of 49 U.S.C. 10701, they must submit evidence relating to market dominance as set forth at 49 CFR 1109.1. (4) Replies to verified statements filed under this section shall be verified.

(h) Except in extraordinary circumstances, the Suspension Board will act on protests against or requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, no later than 18 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer.

(i) Except in extraordinary circumstances the Commission will act on protests or requests for suspension of tariffs filed under paragraph (c) of this section no later than 5 days before the effective date of the tariffs, schedules, or parts thereof to which the protests refer. A decision at the suspension level by the entire Commission on the protests will not be subject to petitions for reconsideration, except at the Commission's discretion. No petition will be accepted that does not reach the Commission by 4:00 p.m. (Washington, D.C. time) on the workday following the Commission's action.

(49 U.S.C. 304(a)(1), 316(b) and 316(g), and 5 U.S.C. 553 and 559)

[42 FR 23806, May 11, 1977, as amended at 42 FR 42690, Aug. 24, 1977; 45 FR 5739, Jan. 24, 1980; 45 FR 48150, July 18, 1980; 45 FR 80111, Dec. 3, 1980]

§ 1100.41 Service of investigation order; default where failure to comply. (Rule 41)

An order instituting an investigation will be served by the Commission upon respondents. If within the time period stated in that order a respondent fails to comply with any requirement specified therein, respondent shall be deemed in default and to have waived any further hearing. Thereafter the investigation may be decided without further proceedings.

Petitions Seeking Institution of Rulemaking Proceedings

§ 1100.43 Modified procedure, how initiated. (Rule 43)

The Commission may, in its discretion, order that a proceeding be heard under modified procedure if it appears that substantially all important issues of material fact may be resolved by means of written materials and that the efficient disposition of the proceeding can be made without oral hearing.

(a) *Commission's initiative or by request.* Modified procedure (see Rule 5(j)) will be ordered in a proceeding upon the Commission's initiative or upon its approval of a request filed by any party that the modified procedure shall be observed.

(b) *Order directing modified procedure.* An order directing modified procedure will list the names and addresses of the persons who at that time are parties to the proceeding, and direct that they comply with the modified procedure rules. As used in Rules 47, 49, and 51 the term "complainant" shall comprehend the party having the initial duty to establish the truth of the claim or to justify the relief or authorization sought, and the term "defendant" shall comprehend the party controverting the truth of the claim or opposing the relief or authorization sought.

§ 1100.44 Modified procedure: Effect of Order. (Rule 44)

(a) *Relief from answer rule.* Issuance of an order directing modified procedure shall relieve defendant from the obligation of answering as provided in Rule 33.

(b) *Default where failure to comply.* If within any time period provided in the modified procedure rules a party fails to file a pleading required by those rules, or otherwise fails to comply therewith, such party shall be deemed to be in default and to have waived any further hearing. Thereafter the proceeding may be disposed of without further notice to the defaulting party, and without other formal proceedings as to such party.

§ 1100.45 Modified procedure; intervention. (Rule 45)

Persons permitted to intervene under modified procedure shall file and serve pleadings in conformity with the provisions of Rule 47 below.

§ 1100.46 Modified procedure; joint pleadings. (Rule 46)

Parties having common interests, to the extent practicable, shall arrange for joint preparation of pleading filed under modified procedure.

§ 1100.47 Modified procedure; content of pleadings. (Rule 47)

(a) *Generally.* A statement filed under the modified procedure after that procedure has been directed shall state separately the facts and arguments and include the exhibits upon which the party relies. Only facts contained in the verified statement of facts can be used in argument. If, pursuant to Rule 44(a), no answer has been filed, defendant's statement must admit or deny specifically and in detail each material allegation of the complaint. In addition, defendant's statement and complainant's statement in reply shall: specify those statement of fact and arguments of the opposite party to which exception is taken, and include a statement of the facts and arguments in support of such exception. Complainant's statement of reply shall be confined to rebuttal of the defendant's statement.

(b) *Exhibit Identification.* An exhibit which is part of any pleading filed under modified procedure shall serially be numbered and bear the notation, properly filled out, in the upper right hand corner: "Complainant (Defendant) ———————— Exhibit No. ———————— Witness ————————.

(c) *Damages.* If an award of damages is sought the paid freight bills or properly certified copies thereof should accompany the original of complaintant's statement when there are not more than 10 shipments, but otherwise the documents should be retained.

§ 1100.48 Modified procedure; verification. (Rule 48)

The facts asserted in any pleading filed under modified procedure must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses orally to substantiate the facts asserted should hearing become necessary. The original of any pleading filed under modified procedure must show the signature, capacity, and impression seal, if any, or the person administering the oath, and the date thereof.

§ 1100.49 Modified procedure; when pleadings filed and served. (Rule 49)

Within 20 days from the date of service of an order requiring modified procedure, complainant shall serve upon the other parties a statement of all the evidence upon which it relies. Within 30 days thereafter defendant shall serve its statement. Within 20 days thereafter complainant shall serve its statement in reply. No further reply may be made by any party except by permission of the Commission.

§ 1100.50 Modified procedure; copies of pleadings. (Rule 50)

Except as otherwise provided in Rule 247, the original and six copies of any statement made pursuant to Rule 49 shall be filed with the Commission. Subsequent pleadings are subject to Rule 52.

§ 1100.51 Modified procedure; hearings. (Rule 51)

(a) *Request for cross examination or other hearing.* If cross examination of any witness is desired the name of the witness and the subject matter of the desired cross examination shall, together with any other request for oral hearing, including the basis therefor, be stated at the end of defendant's statement or complainant's statement in reply as the case may be. Unless material facts and in dispute, oral hearing will not be held for the sole purpose of cross examination.

(b) *Hearing issues limited.* The order setting the proceeding for oral hearing if hearing is deemed necessary, will specify the matters upon which the parties are not in agreement and respecting which oral evidence is to be introduced.

§ 1100.52 Modified procedure; subsequent procedure. (Rule 52)

Procedure subsequent to that provided in the modified procedure rules

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shall be the same as that in proceedings not handled under modified procedure.

§ 1100.53 Notice of hearing. (Rule 53)

(a) *Assignment; service and posting of notice; electronically recorded transcript.* In those proceedings in which an oral hearing is to be held, the Commission will, by order or otherwise assign a time and place for hearing. Such action will include notice when the transcript is to be made by electronic recording. Notice of such hearing will be posted in the Office of the Secretary of the commission and will be served upon the parties and such other persons as may be entitled to receive notice under the act.

(b) *Requests for changes in assignment.* Requests for postponements of date of hearing will be granted only for good and sufficient cause. After notice of the use of electronic recording, any request for stenographic transcript by the Commission's official reporter in lieu thereof must be made in writing to the Secretary of the Commission not less than 20 days prior to the date of the hearing. Such request will contain a statement that the requestor will provide the Commission with the original and one copy of such stenographic transcript at his own expense in accordance with the schedule of charges in the official reporting contract. In the event a request in made for a written transcript of an electronic recorded proceeding at a later date, the requestor will furnish at no expense to the Commission, an originai and one copy of such written transcript for the Commission's use, in accordance with the schedule of charges in the official reporting contract.

(c) *Service of notice of assignment change.* The Commission may confine the service of notice of a change of time or place assigned for hearing (other than by publication or posting), or of any adjourned, further, or supplemental hearing to those ony who have indicated to the Copmmission a desire to be notified, at their own expense if telegraphic advice becomes necessary, of any such change.

§ 1100.54 Subpoena. (Rule 54)

(a) *Requests; particularity.* Unless directed by the Commission upon its own motion, a subpoena to compel a witness to produce documentary evidence will be issued only upon petiton showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired, and the facts expected to be proved thereby; *Provided, however,* That for good cause shown, in lieu of a petition, the request for such a subpoena may be made orally upon the record to the officer presiding at the hearing. A request for issuance of a subpoena other than to compel the production of documentary evidence may be made either by letter (original only need be filed with the Commission) or orally upon the record to the officer presiding at the hearing. A showing of general relevance and reasonable scope of the evidence sought may be required and the subpoena will be issued or denied accordingly.

(b) *Issuance.* A subpoena may be issued by the Commission or by the officer presiding at the hearing, but only under the signature of the Secretary or of a member of the Commission.

(c) *Service.* The original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be delivered to him by the officer or person making service.

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereof, stating the date, time and manner of service; and return such affidavit on, or with, original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure shall be stated on the original subpoena. The written acceptance of service of a subpoena by the person named therein shall be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, shall be returned forthwith to the Secretary of

the Commission, or, if so directed on the subpoena, to the officer presiding at the hearing at which the person subpoenaed is required to appear.

(e) *Witness fees.* A witness who is summoned and responds thereto is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the tesimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

§ 1100.55 Discovery. (Rule 55)

(a) *In general.* Unless otherwise available under the Interstate Commerce Act or other applicable statutes, parties may obtain discovery pursuant to these rules (Rules 55-65, inclusive) regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in Rules 22, 23, 200, and 225, and proceedings that need not be determined on a record after hearing) provided that, discovery procedures (except for written interrogatories and requests for admissions) may be used only when the Commission, upon its own motion, or upon a verified petition filed by a party, and upon good cause shown, shall have entered an order approving such use. Such petitions, where required, must be filed in sufficent time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of any established date for hearing or for submission of initial statements under modified procedure. Likewise, the use of discovery in those circumstances in which no petition is required must be accomplished without requiring the postponement of any established date for hearing or for submission of initial statements under modified procedure. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; provided that Rules 55-65, inclusive, shall not apply to application proceedings handled pursuant to the modified procedure, except that in such proceedings on petition seeking appropriate discovery procedures may be filed.

(b) *Definition.* The term "Commission," as used in these discovery rules (Rules 55-65 inclusive), means the Interstate Commerce Commission, division, Commissioner or presiding officer.

(c) *Protective conditions.* Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, includ ing a designation of the time and place; (3) that the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility in indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred; (4) that the discovery may be had only by a method other than that selected by the party seeking discovery; (5) that certain matters not be inquired into or that the scope of discovery be limited to certain matters; (6) that discovery be conducted with no one present except persons designated in the protective order; (7) that a deposition after being sealed be opened only by order of the Commission; (8) that a trade secret or other confidential research development, or commercial information not be disclosed or be disclosed only in a designated way; and (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just,

enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under Rules 58(d), 60(a), or 65.

(d) *Sequence and timing of discovery.* Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Commission may: (1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

§ 1100.56 Deposition. (Rule 56)

(a) *Purpose.* Subject to the proviso in Rule 55(a), the testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Petitons.* The petition filed under Rule 55(a) requesting an order to take a deposition and perpetuate testimony or to produce documents and materials: (1) Shall set forth the facts it desires to establish and the substance it expects to elicit; (2) shall be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced; (3) shall set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and (4) shall specify with particularity the documents and materials which the deponent is requested to produce.

(c) *Order.* If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it will serve an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission may make orders of the character provided by Rule 65.

§ 1100.57 Depositions, location, officer, time, fees, absence, disqualification. (Rule 57)

(a) *Where deposition shall be taken.* Unless otherwise ordered or agreed to by stipulation, depositions shall be taken in the city or municipality where the deponent is located.

(b) *Officer before whom taken.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.

(c) *Fees.* A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee shall be paid by the party at whose instance the deposition is taken.

(d) *Failure to attend or to serve subpoena expenses.* (1) If the party who filed a petition pursuant to Rule 56(b) fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order entered

under Rule 56(c), the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(2) If the party who filed a petition pursuant to Rule 56(b) fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(e) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.

§ 1100.58 Depositions, procedures. (Rule 58)

(a) *Examination.* Examination and cross-examination of witnesses shall proceed as permitted at a hearing and shall be limited to the subject matter specified in the order under Rule 56(c). All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and he shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.

(b) *Use of depositions.* At the hearings, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds: (i) That the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at public hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting

or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not aply to the use by an adverse party of a deposition under paragraph (b)(2) of this rule. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Motions to protect.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 55(c). If the order made terminates the examination, it shall be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(e) *Recordation.* The officer before whom the deposition is to be taken shall observe the provisions of Rules 13 and 69 respecting appearances and typographical specifications, shall put the witness on oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.

(f) *Signing.* When the testimony is fully transcribed or otherwise recorded, the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance whch the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.

(g) *Attestation.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is not a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel, or is financially interested in the proceeding.

(h) *Return.* The officer shall securely seal the deposition in an envelope indorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall either personally deliver or promptly send the original and one copy of all exhibits, by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.

(i) *Notice.* The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) *Copies.* Upon payment of reasonable charges therefor, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

§ 1100.59 Effect of errors and irregularities in depositions. (Rule 59)

(a) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) *As to taking of deposition.* (1) Objection to the competency of a wit-

ness or to the competency, relevancy, or materiality of testimony are not wavied by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 57 and 58 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1100.60 Written interrogatories to parties. (Rule 60)

(a) *Availability; procedures for use.* Subject to the proviso in Rule 55(a), any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served, and answers thereto, shall also be filed with the Commission. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party submitting the interrogatories, but not less than 15 days after the service thereof.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilation, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the act, it shall be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the act.

(c) *Service of interrogatories in those proceedings not requiring a petition pursuant to Rule 55(c).* In those proceedings not requiring a petition for interrogatories pursuant to Rule 55(a) and unless under special circumstances and for good cause shown, no written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing

or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 40 days prior to such date.

§ 1100.61 Request for admission. (Rule 61)

(a) *Availability; procedures for use.* Subject to the proviso in Rule 55(a), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of Rule 55(a) set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served, and answers thereto, shall also be filed with the Commission. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not on that ground alone, object to the request; he may, subject to the provisions of Rule 65(c), deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections shall be filed with the Commission.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Service of written requests for admission in those proceedings not requiring a petition pursuant to Rule 55(a).* In those proceedings not requiring a petition for requests for admission pursuant to Rule 55(a), and unless under special circumstances and for good cause shown, no requests for admission shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country they shall not be served within 40 days prior to such date.

§ 1100.62 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record. (Rule 62)

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part introduced, and any party

may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto shall be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

§ 1100.63 Supplementation of responses. (Rule 63)

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:

(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to: (1) The identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.

(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.

§ 1100.64 Production of documents and things and entry upon land for inspection and other purposes. (Rule 64)

(a) *Scope.* Subject to the proviso in Rule 55(a), any party may be ordered and directed: (1) To produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 55(a) and which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to Rule 60(b); or (2) to permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 55(a).

(b) *Procedure.* Any petition filed pursuant to this rule shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

§ 1100.65 Failure to respond to discovery. (Rule 65)

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under Rule 58(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to Rule 60(a), the party seeking discovery may apply for an order compelling an answer, by motion filed with the Commission and served on all parties and deponents. Such motion to compel and answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may com-

plete or adjourn the examination before he applies for an order.

(b) *Failure to comply with order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under sections 12(3) and 12(4) of the act to compel appearance and compliance with the Commission's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under Rule 64 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order:

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony:

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under Rule 61 to admit the genuineness of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact, the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 60, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

HEARINGS

§ 1100.66 Authority of officers. (Rule 66)

(a) An officer may grant leave to amend or to file any pleadings, or to intervene, upon request tendered at the hearing, but in no event shall an officer grant leave to amend if thereby the issues would be so changed as to make a referred matter one which should properly be referred to a different officer. An officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding. The officer shall regulate the procedure in the hearing before him, and shall have authority to take all measures necessary or proper for the efficient performance of the duties assigned him, including the authority to hold hearings, to administer oaths and affirmations, to examine witnesses, to issue subpoenas at the hearing of arguments by the officer, or (Rule 55(a)) dispose of requests for discovery, to hold conferences for the settlement and simplificaton of issues, to rule on motions and dispose of procedural requests, to make initial decisions, and to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts. Any proceedings in which an oral hearing is

held and in which the officer can announce his decison either: (1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or (2) by appropriate notification to the parties after the close of hearing may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(b) At any oral hearing conducted before the Commission, an Administrative Law Judge or joint board, at which an official record of the proceeding is made, the recording of the hearing by means of live or delay television, radio, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter will not be permitted without special permission of the Chairman of the Commission.

§ 1100.67 Prehearing conferences. (Rule 67)

(a) *Purposes.* Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their attorneys may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

(1) The simplification of issues;

(2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;

(3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any or all parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof;

(4) The procedure at the hearing;

(5) The limitation of the number of witnesses;

(6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

(7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding.

Parties may request prehearing conference.

(b) *Facts disclosed privileged.* Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, shall not be used against participating parties either before the Commission or elsewhere unless fully substantiated by other evidence.

(c) *Recordation and order.* Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered and defining the issues, shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.

(d) *Objection to the order; subsequent proceedings.* If an order is entered, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements reached at such conference. Thereafter the terms of the said order or modification thereof, the written stipulation, or statement of the officer, as the case may be, shall determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

§ 1100.68 Stipulations. (Rule 68)

Apart from the procedure contemplated by the prehearing provisions (Rule 67), and upon permission granted, the parties may in the discretion of the officer, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. It is desired that the facts be thus agreed upon so far as and whenever practicable.

§ 1100.69 Appearances; standard of conduct; absence from hearing. (Rule 69)

(a) *Who may appear.* Any individual may appear for himself and any member of a partnership which is a party to any proceeding may appear for such partnerships upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.

(b) *Appearances.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. When a practitioner enters an appearance at a hearing he will be expected to represent his client faithfully until the completion of the proceeding in which he has been retained, or until the completion of the part of the proceeding for which he has specially appeared. A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or willfully to absent himself therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person desires to appear specially, he must expressly so state when he enters his appearance and at that time he shall also state the questions or issues to which he is confining his appearance; otherwise, his appearance will be considered as general.

(c) *Standard of conduct.* Contemptuous conduct by any person appearing at a hearing shall be ground for his exclusion by the presiding officer from the hearing.

(d) *Absence from hearing.* If a party or the person representing him shall, after entering an appearance, attempt to withdraw from the hearing in a manner other than that specified in paragraph (b) of this section, the Commission on its own motion, or on motion of any party to the proceeding, may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or the disciplining of the practitioner concerned.

§ 1100.70 Intervention; petitions. (Rule 70)

(a) *Content generally.* A petition for leave to intervene must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the relief sought. If the proceeding be by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.

(b) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown.

(c) *Broadening issues; filing.* If the petitioner seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in season to permit service upon and answer by the parties in advance of the hearing.

(d) *Copies; service; replies.* When tendered at the hearing, sufficient copies of a petition for leave to intervene must be provided for distribution as motion papers to the parties represented at the hearing. If leave be granted at the hearing, one additional copy must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and three copies of the petition shall be submitted to the Commission together with a certificate that service in accordance with Rule 20 has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

(e) *Disposition.* Leave will not be granted except on averments reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner thereby becomes an intervener and a party to the proceeding.

§ 1100.71 Participation without intervention. (Rule 71)

In an investigation proceeding, or in a proceeding under section 1a, of the act, and in a proceeding of any one of the characters herein enumerated when heard on a consolidated record with a complaint proceeding, but in no other proceeding, an appearance may be entered at the oral hearing, or in any proceeding in which the justness or reasonableness of any rate, rule, charge, or other provision of a tariff is at issue and the Commission has ordered that the proceeding be heard under modified procedure, without filing a petition in intervention or other pleading, if no affirmative relief is sought, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.

§ 1100.72 Witness examination; order of procedure. (Rule 72)

Witnesses will be orally examined under oath before the officer unless their testimony is taken by deposition or the facts are presented to the Commission in the manner provided under modified procedure. In formal-complaint, application, and investigation proceedings, complainant, applicant, and respondent, respectively, shall open and close at the hearing, except at further hearings granted on petition the petitioners requesting further hearing shall open and close; and except, further, that parties other than the respondent shall open and close in investigations in which the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer, who also shall designate the order of presentation in any other type of proceeding, of any other party to any proceeding, or of parties to several proceedings being heard upon a consolidated record.

§ 1100.73 Evidence; admissibility generally. (Rule 73)

Any evidence which is sufficiently reiable and probative to support a decision under the provisions of the Administrative Procedure Act, or which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

§ 1100.74 Evidence; cumulative restriction. (Rule 74)

It shall be the duty of the officer before whom any proceeding is being heard to limit the number of witnesses whose testimony may be merely cumulative. And in order to enforce this section, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered.

§ 1100.75 Evidence; prepared statements. (Rule 75)

With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of his opinion prepared by him, or written answers to interrogatories of counsel, or a prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement shall not include argument; that before any such statement is read, or admitted in evidence the witness shall deliver to the officer, the reporter, and

to opposing counsel as may be directed by the officer, a copy of such statement or of such interrogatories and has written answers thereto; and that the admissibility of the evidence contained in such statement shall be subject to the same rules as if such testimony were produced in the usual manner, including the right of cross-examination of the witness. Such approval ordinarily will be denied when in the opintion of the officer the memory or demeanor of the witness may be of importance.

§ 1100.76 Evidence; official records. (Rule 76)

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.

§ 1100.77 Evidence; entries in regular course of business. (Rule 77)

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.

§ 1100.78 Evidence; documents containing matter not material. (Rule 78)

When material and relevant matter offered in evidence is in a document containing other matter not material or relevant, the offering party shall produce the document at the hearing, shall plainly designate the matter so offered, and shall accord to the officer and to participating counsel an opportunity to inspect it. Unless it is desired to read such matter into the record, and the officer so directs, true copies in proper form of the material and relevant matter taken from the document may be received as an exhibit, but other parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant. The document itself will not be received.

§ 1100.79 Evidence; documents in Commission's files. (Rule 79)

(a) *In general.* If any matter contained in a report or other document, not a tariff or schedule, open to public inspection in the files of the Commission is offered in evidence such report or other document need not be produced but in other respects the provisions of Rule 78 will apply.

(b) *Tariffs and schedules; official notice in investigation proceedings.* If any matter contained in a tariff or schedule on file with the Commission is offered in evidence, such tariff or

schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified and may be received in evidence subject to check by reference to the original tariff or schedule. Official notice will be taken without offer or production of that portion of any tariff or schedule which is the subject matter of an order of investigation and suspension.

§ 1100.80 Evidence; records in other Commission proceedings. (Rule 80)

If any portion of the record before the Commission in any proceeding other than the one on hearing is offered in evidence a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(a) The party offering the same agrees to supply such copy later at his own expense, if and when required by the Commission; and

(b) The portion is specified with particularity in such manner as to be readily identified; and

(c) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any other portion offered by any other party may be incorporated by like reference subject to paragraphs (a) and (b) of this section; and

(d) The officer directs such incorporation. Any such portion so offered, whether in the form of an exhibit or by reference, shall be subject to objection.

§ 1100.81 Evidence; abstracts of documents. (Rule 81)

When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive in evidence other than a limited number of such documents said to be typical. Instead he may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with Rule 95. If the proffer be for other purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.

§ 1100.82 Evidence; exhibits. (Rule 82)

(a) *Generally.* Exhibits of a documentary character may have a maximum width of 22 inches by 12½ inches in height. Whenever practicable the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever practicable, rate comparisons and other evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of fact, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) *Reference to tariff authority, routes, and distances.* All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor, and if distances are shown must also show the authority therefor, and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed; except that the routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed

by the Commission and based on short-line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

(c) *Copies.* Unless the officer shall otherwise direct, the original and one copy of each exhibit of a documentary character shall be furnished for the use of the Commission—original to be delivered to the reporter, and the copy to the officer. If the hearing be before a board, a copy of the exhibit shall be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies shall be furnished to counsel in attendance at the hearing. Unless the officer shall otherwise direct, in proceedings under the Uniform Bankruptcy Act, the original and three copies of every exhibit of a documentary character shall be furnished for use of the Commission—original to be delivered to the reporter, and the three copies to the office.

(d) *Interchange prior to hearing.* Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

(e) *When excluded how treated.* In case an exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.

§ 1100.83 Record in referred matter unaffected by a second reference. (Rule 83)

If for any reason an order referring a matter to a particular officer is vacated and the matter referred to a different officer, any testimony already taken in such proceeding shall be part of the record along with any testimony which thereafter may be taken.

§ 1100.84 Evidence; filing of subsequent to hearing; copies. (Rule 84)

Except as provided below or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence supplementary to the existing record, within a stated period of time. Documentary evidence thus to be furnished will be given an exhibit number at the time of filing and the parties accordingly advised. Unless otherwise directed by the officer, the original and one copy of such submission shall be filed with the Commission.

§ 1100.85 Ruling of an officer at hearing; objection to. (Rule 85)

Formal exception to a ruling of an officer at a hearing is unnecessary. It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds therefor. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in exceptions or reply to exceptions, if filed, or in a separate petition dealing only with that objection. Rulings of the presiding officer at the hearing may not be appealed prior to service of the initial decision except where such ruling: (a) May result in substantial detriment to the public interest or undue prejudice to any party, and the presiding officer so finds, (b) denies or terminates any person's participation, (c) grants a request for the inspection of documents not ordinarily available for public inspection, (d) overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents,

or (e) for some other reason might, in the opinion of the presiding officer, result in substantial irreparable harm.

§ 1100.86 Oral argument before the hearing officer. (Rule 86)

At the discretion of the hearing officer and upon reasonable notice to the parties, oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs. Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument shall not operate to preclude oral argument before the Commission pursuant to Rule 93.

§ 1100.87 Continuance for further hearing. (Rule 87)

A continuance may be granted by the presiding officer if it is impossible to conclude a hearing within the time available, or for any reason a continuance is necessary or advisable, but a joint board shall not set a date and place for a continued hearing without first consulting the Commission. If consultation with the Commission is impracticable, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.

§ 1100.88 Transcript of record. (Rule 88)

(a) *Filing.* After the close of the hearing the complete transcript of testimony taken and the exhibits shall be filed with the Commission.

(b) *Corrections.* A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections shall be served upon all parties of record and with 2 copies to the official reporter.

(c) *No free copies.* No free copies of transcript will be furnished to any party to any proceeding.

BRIEFS; REPORTS; ORAL ARGUMENTS

§ 1100.89 Briefs; content and arrangement. (Rule 89)

(a) *Due date.* The due date of each brief must appear on its front cover or title page.

(b) *Table of contents; citations.* A brief of more than 20 pages shall contain on its front flyleaf a table of contents and points made with page references, the table of contents to be supplemented by a list of citations, alphabetically arranged, with references to the pages in which they appear.

(c) *Sketch or chart.* In proceedings wherein misrouting or undue prejudice or preference are alleged, the complainant should include as part of the brief a small sketch or chart adequately reflecting the situation.

(d) *Evidence abstract.* A brief filed after a hearing may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. In the event the party elects not to include a separate abstract in his brief, he should give specfic reference to the portions of the record, whether transcript or otherwise relied upon in support of the respective statements of fact made throughout the brief.

(e) *Requested findings.* Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.

(f) *Exhibit reproduction.* Exhibits should not be reproduced in the brief, but may, if desired, be shown, within reasonable limits, in an appendix to the brief. Analyses of such exhibits should be included in the brief where pertinent.

§ 1100.90 Briefs; when filed. (Rule 90)

In a proceeding which has been the subject of oral hearing, and in which briefs are to be filed, which fact will be stated by the officer on the record, only one brief shall be filed by each party. The officer shall fix for all parties the same time within which to file briefs, which time shall not exceed 45 days from the close of the hearing

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unless otherwise ordered by the Commission. Reply briefs are not permitted unless ordered by the Commission.

§ 1100.91 Initial decision. (Rule 91)

(a) *How served.* An initial decision will be served by mailing a copy to each party of record and to other persons who are believed to have an interest in the proceeding.

(b) *When and how effective as the order of the Commission.* If no exceptions or appeal is filed to the initial decision made: (1) In any proceeding by a Commissioner, and administative law judge, or a joint board, or (2) in rail proceedings by an employee board or division, and the Commission does not stay it, the intial decision becomes the order of the Commission upon expiration of the period for filing exceptions or appeals, or of any postponement of such period, or postponement of the effective date of such initial decision and a notice stating that the initial decision has, giving the date, become the order of the Commission will be mailed to the parties by the Commission. In non-rail proceedings, the initial decision of officers other than individual Commissioners, administrative law judges, and joint boards are effective as the decision of the Commission, although administrative appeals as defined in Rule 97 may be filed.

§ 1100.92 Voiding initial decision. (Rule 92)

The division or Commission may, in its discretion, void any requirement for an initial decision and may direct that any matter shall be considered forthwith by the division or Commission if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance or if the due and timely execution of its functions so requires. All parties of record shall be notified by the Commission whenever the Commission or division voids the requirement for an initial decision.

§ 1100.93 Oral argument before Commission. (Rule 93)

(a) *Request, to whom address.* Request for oral argument should be addressed to the Secretary, Interstate Commerce Commission. Oral argument shall be at the discretion of the Commission or its division.

(b) *Request, by whom made.* Any party may submit a written request for oral argument, stating reasons therefor. No replies shall be entertained.

(c) *Request, when filed.* Requests for oral argument shall be filed within 30 days after the date of service of the decision, order or requirement being appealed, unless a different time period is fixed by the Commission or division, which shall rule upon such requests by order.

(d) *Time allotment.* Unless otherwise directed, the proponents of a rule or order will be allowed one-half hour for oral argument and shall be heard first. Opponents, in the aggregate, will also be allowed one-half hour. One counsel only will be heard for each side, unless additional presentations are specifically authorized and additional time is allocated for them.

ORDER COMPLIANCE; DAMAGE STATEMENTS

§ 1100.94 Compliance with Commission's orders. (Rule 94)

When in consequence of proceedings under the act, the Commission has by its order directed a defendant or a respondent to do or desist from doing a particular thing, such defendant or respondent must notify the Commission on or before the date upon which such order becomes effective of the manner and details of compliance with the order. Such notification shall be in the form of an affidavit subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules and must, when filed or tendered to the Commission for filing, show simultaneous service thereof upon all parties to the proceedings in accordance with Rule 20(a). If a change in rates or schedules is required, the notification must be given in addition to the filing of proper tariffs or schedules, and must specify the Interstate Commerce Commission numbers of the tariffs or schedules so filed.

§ 1100.95 Statements of claimed damages based on Commission findings. (Rule 95)

When the Commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the form No. 5. (See Appendix B.) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route, a separate statement should be prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies, thereof, should then be forwarded to the carrier which collected the charges, for vertification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and corrected agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of an order awarding damages.

§ 1100.96 Administrative appeals—Proceeding involving both rail and nonrail matters. (Rule 96)

Administrative appeals shall be governed by the provisions of Rule 98 (rail proceedings) in any proceeding in which a significant rail matter is involved, regardless of whether nonrail matters are also involved.

§ 1100.97 Administrative appeals—nonrail proceedings. [Reserved]

§ 1100.98 Appellate procedures.

(a) *Scope of rule.* These appellate procedures apply in cases where a hearing is required by law or Commission action. They do not apply to informal matters such as car service, temporary authority suspension, special permission actions, or purely procedural matters covered by 49 CFR 1011.7, or to other matters of an interlocutory nature except as specifically provided below. Abandonment and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. Requests for appellate relief may relate either to initial decisions or to Commission actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(b) *Initial decisions.* This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, joint board, division, or panel of the Commission.

(1) An appeal of right is permitted.

(2) Appeals shall be based on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion, or finding is contrary to law, Commission precedent, or policy;

(iii) That an important question of law, policy, or discretion is involved which is without governing precedent;

(iv) That prejudicial procedural error has occurred.

(3) Appeals shall detail the assailed findings with supporting citations to the record and authorities.

(4) Appeals and replies shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(5) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier operating authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(6) The timely filing of an appeal to an initial decision shall stay the effect of the action pending determination of the appeal.

(7) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Commission and shall be effective at the expiration of the time for filing, unless otherwise provided.

(c) *Commission actions other than initial decisions.* This category includes: A decision of a division in the first instance, where the requirement for an initial decision was voided [for rail proceedings pursuant to 49 U.S.C. 10327(c)] or waived [for non-rail proceedings pursuant to 49 U.S.C. 10322(c)]; an action of the entire Commission in the first instance; and an action taken by a review board or division on an appeal filed under paragraph (b) of this rule.

(1) A discretionary appeal is permitted. It shall be designated a "petition for administrative review," except that, when it is related to an action of the entire Commission in the first instance, it shall be designated a "petition to reopen."

(2) The petition will be granted only upon a showing of one or more of the following points:

(i) The prior action (all categories) will be affected materially because of new evidence or changed circumstances.

(ii) The prior action was taken by a division in the first instance or by a review board or division in an appellate capacity, and involves a matter of general transportation importance.

(iii) The prior action was taken by the entire Commission in the first instance, and involves material error.

(3) To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition shall state in detail the nature of and reasons for the relief requested. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(4) The petition and any reply shall not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and shall accompany those that exceed 10 pages in length.

(5) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(6) The filing of a petition shall not automatically stay the effect of a prior action, but the Commission may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review or petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(7)(i) In a rail proceeding, the action, if not stayed, shall become effective 30 days after it is served, unless the acting body provides for the action to become effective at an earlier date. On the day the decision is served parties may initiate judicial review.

(ii) In a non-rail proceeding, the action, if not stayed, shall be effective on the date it is served, and parties may initiate judicial review.

(iii) In all final actions, the provisions of the action shall take effect on the date of service, unless otherwise provided. On this date parties must comply with the terms, conditions, or orders of the effective decision.

(d) *Petitions to reopen administratively final actions.* A person at any time may file a petition to reopen any administratively final action of the Commission pursuant to the requirements of paragraphs (c)(3) and (c)(4) of this rule. A petition to reopen an operating rights application proceeding must state in detail information sufficient to establish either fraud or ministerial mistake in the earlier decision. A petition to reopen all other proceedings shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and shall include a request that the Commission make such a determination.

(e) *Petitions for other relief.* (1) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

(2) When the terms of a Commission action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review shall be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(3) A petition or reply shall not exceed 10 pages in length.

(f) *Exhaustion of remedies and judicial review.* These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under paragraph (b) or (c) of this rule, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(49 U.S.C. 10321 and 5 U.S.C. 553)

[46 FR 20208, Apr. 3, 1981, as amended at 46 FR 40517, Aug. 10, 1981]

§ 1100.99 Petitions not otherwise covered. (Rule 99)

A party seeking relief not otherwise provided for by these rules may file a petiton for such relief, stating reasons therefor. Petitions barred by any other rule of practice shall not be entertained.

Special Rail Requirements

§ 1100.100 Application of the rules: Time limits—Proceedings involving common carriers by railroad. (Rule 100)

In applying these rules to proceedings involving common carriers by railroad subject to Part I of the Interstate Commerce Act, the Commission will be governed by the time limits specified in section 17 (9) and (14) of said Act, as set forth in Appendix G.

§ 1100.101 Utilization of the Rail Services Planning Office and other Commission Employees. (Rule 101)

(a) The Commission may, in its discretion, call upon the Rail Services Planning Office for assistance in evaluation, analysis, fact finding, and planning, particularly with regard to rulemaking proceedings, mergers, and appeals within the Commission in an effort to focus issues and expedite matters before the Commission.

(b) In rulemaking proceedings or complex adjudicatory proceedings, the Commission will utilize additional administrative law judges and employees of the Rail Services Planning Office for the taking of evidence or the receipt of views and comments and may, by Commission order, designate such additional procedures as it deems nec-

essary to insure the expedited resolution of such proceeding.

§ 1100.102 Enforcement of time limits; disposition of pleadings—Proceedings involving common carriers by rail. (Rule 102)

(a) *Enforcement of time limits.* In proceedings with respect to any matter involving a common carrier by railroads, the failure of any party to meet prescribed time limits without a showing of extraordinary circumstances may result in the dismissal of any involved complaint, application or appeal or the striking of any petition, pleading, or motion. Should the Commission fail to meet a prescribed time limit for disposition of any matter, it must issue a statement to all parties of record: (1) Explaining the reason for its failure and (2) delineating the steps it will take to expedite the matter.

(b) *Disposition of pleadings.* In proceedings with respect to any matter involving a common carrier by railroad, any pleading or motion for which no specific provision as to time for disposition is made must be disposed of expeditiously and, in any event, not later than 120 days after the time permitted for filing pleadings and replies.

Subpart B—Special Rules of Practice

§ 1100.200 Rules of practice governing procedure in certain suspension and long and short haul restriction matters.

(a) The proceedings of the Suspension Board shall be informal. No transcriptions of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required tc be attested, oaths will not be administered.

(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the orders:

(1) Of the Suspension Board,

(2) Of an Appellate Division reversing, changing, or modifying a previous determination of an employee board, and

(3) Of the Commission or a Division suspending schedules or granting or denying relief from long and short haul restrictions prior to hearing in proceedings not subject to a prior determination by an employee board.

In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, an original and 11 copies of every protest or reply filed under this section shall be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of every pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's rules of practice.

(c) When the Suspension Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question: *Provided, however,* That when the Suspension Board has declined to suspend a protested change in rail rates filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the petition must be in the hands of the Suspension Board not later than 9 a.m., United States Standard or local Daylight Saving, whichever is in effect in the District of Columbia, on the workday before the proposed effective date of the protested matter; *And provided further,* That when the Suspension Board has declined to suspend a pro-

posed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the petition shall be filed within 2 work days after the Suspension Board has acted. For the purpose of this section, a work-day shall be considered as any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section.) Petitions submitted under this section shall (except as provided in the case of a protested change in rail rates filed under the provisions of 49 U.S.C. 10762(c)(3)) be filed with the Secretary of the Commission by 4 p.m. United States Standard Time (or by 4 p.m. local Daylight Saving Time if that time is observed in the District of Columbia). Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Suspension and Fourth Section Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request shall contain the following prefatory statement: "This matter requires expedited handling under Rule 200 of the Commission's Rules of Practice." A petition not timely filed shall be rejected by the Secretary.

(d) When the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the designated appellate division will, except in extraordinary circumstances, act on petitions for reconsideration no later than 2 work days after the petition is filed.

[45 FR 5740, Jan. 24, 1980, as amended at 45 FR 80111, Dec. 3, 1980]

§ 1100.225 Rules of practice governing the procedures of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. (Rule 225).

(a) The proceedings of the Motor Carrier Board, the Finance Board, the Operations Board, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards shall be informal. No transcript of these proceedings will be made. Subpoenas will not be issued, and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

(b) A petition for reconsideration of a decision of the Motor Carrier Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Tariff Rules Board, the Tariff Integrity Board, the Special Docket Board, and/or the Regional Motor Carrier Boards may be filed by any person.

(c) A petition for reconsideration of a Finance Board decision may be filed only by a party to the proceeding.

(d) A petition for reconsideration pursuant to paragraphs (b) and (c) of this section and reply thereto will be governed by the Commission's rules of practice, except as provided in paragraphs (e), (f), and (g) of this section.

(e) The original and six copies of every pleading, document, or paper permitted or required to be filed under this section, shall be furnished for the use of the Commission.

(f) Except as provided below for matters involving emergency temporary authority, a petition seeking reconsideration of a decision entered under 49 U.S.C. 10928 shall be filed within 20 days after the date of service of this decision. Within 20 days after the filing of the petition, any person may file and serve a reply to the petition. An applicant seeking reconsideration of a decision concerning *emergency temporary authority* must file a

petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 20 days after the filing of the petition. Pleadings must be served on all parties of record.

(g) A petition seeking reconsideration of an affirmative order of the Motor Carrier Board entered pursuant to the rules and regulations governing transfers of property brokers' licenses, Part 1045 of this chapter, passenger brokers' licenses, Part 1133 of this chapter, motor carrier operating rights, Part 1132 of this chapter, water carrier operating rights, Part 1141 of this chapter, and freight forwarder permits, Part 1151 of this chapter, must be filed within 20 days following publication of a synopsis of such order in the FEDERAL REGISTER. In such a petition the matters claimed to have been erroneously decided and the alleged errors must be specified with particularity. If the petition contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted in affidavit form. Within 20 days after the final date for filing of such petitions with the Commission, any interested person may file and serve a reply thereto.

(h) *Service; Special Permission Applications.* Every application requesting authority to change, cancel, or reissue a tariff matter under suspension or continued in effect as a result of suspension shall include a certificate showing simultaneous service thereof upon all parties to the investigation and suspension proceeding. Service shall be made in the manner specified in Rule 20(a) of this part. Notification of the action taken by the Special Permission Board will be given to all parties of record.

(49 U.S.C. 10321)

[42 FR 23806, May 11, 1977, as amended at 45 FR 3583, Jan. 18, 1980; 46 FR 13728, Feb. 24, 1981]

§ 1100.240 Filing of applications under 49 U.S.C. 11344.

(a) *Procedures used generally.* The Interstate Commerce Commission uses two basic types of procedures. Most cases are processed under the *modified procedure* (on the basis of an evidentiary record composed entirely of written statements). Occasionally, a case involves extraordinary substantive issues, the resolution of which requires taking testimony from persons at an *oral hearing.* These rules govern both types of proceedings. It is the Commission's policy to process cases under the modified procedure where at all possible.

(b) *Starting the application process.* Carriers that seek to consolidate, purchase, merge, or lease operating rights and properties, or acquire control of motor carriers shall properly complete an application to do so. (See 49 CFR 1003.1 and 1002 regarding the forms and filing fees.) Application forms are available at Commission field or regional offices or at the Office of the Secretary.

(c) *Information to be submitted by applicants*—(1) *The application form.* Application forms are explicit concerning the information which shall be submitted. Failure to fully comply with the instructions on the application form may result in the rejection, dismissal, or denial of the application. Persons shall resolve any questions relating to the application form by contacting the Commission before filing the application.

(2) *Petitions for waiver of application requirements.* Prior to filing an application under this section, applicants may file a petition seeking waiver from any of the filing requirements set forth in the application form. With respect to the information for which a waiver from the filing requirement is sought, petitioners must demonstrate that (i) it is unavailable or that it is unnecessary for the disposition of the case, (ii) the Commission can make the requisite statutory findings governing the transaction without benefit of such information, and (iii) consequently, the filing requirement would impose an undue burden upon applicants.

Applicants may not file their application until after the Commission's decisional body reviewing the petition has rendered its decision on the waiver request. Where a waiver request is granted, the FEDERAL REGISTER notice of the application will indicate the extent to which applicants have been relieved from the usual filing requirements.

(3) *Caption summary.* Each application shall be accompanied by a caption summary: (i) Describing the proposed transaction, and indicating (ii) (A) whether any portion of the operating rights involved in the transaction is proposed to be cancelled or restricted, (B) whether an application under 49 U.S.C. 11349 to perform temporarily the service proposed to be acquired in the permanent application has been filed, and (C) whether another application has been filed under provisions of Title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. (See 49 CFR 1100.240(d) regarding directly related applications.)

(4) The completed application form shall contain applicants' entire case (other than an optional reply statement in an opposed proceeding) under the modified procedure, unless (i) the Commission finds, upon its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case, or (ii) the application contains an impediment. (See rule 240(g) *infra.*)

Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) *Directly related applications.* (1) Directly related applications shall be filed along with the proposed acquisition transaction under the same cover (i.e. in a single submission). These applications are filed under other provisions of title 49, Subtitle IV, U.S. Code, "Transportation" which either directly affect or are directly affected by the application filed under 49 U.S.C. 11344. Typically, they include requests for authority to obtain new operating authority, to modify or convert existing operating authority, or to issue securities or assume debt obligations. Whenever an application is filed under these rules and a directly related application is also filed, the caption summary of each shall make reference to both applications.

(2) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the (lead) proceeding under 49 U.S.C. 11344 will be applied.

(e) *Where the application is sent.* (1) The original and (2) two copies of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 10423, along with the application fee.

(2) Copies of the application shall be sent to the Commission personnel and State officials specified in the application form.

(f) *Commission review of the application.* (1) Interstate Commerce Commission staff will review the application for correctness and completeness. Minor errors will be corrected without notification to applicant. Incomplete applications may be rejected.

(2) The caption summary will be published in the FEDERAL REGISTER to give notice to the public in case anyone wishes to oppose the application. It will be published in the form of a tentative grant of authority. (Also, see rule 240(g) *infra*, regarding applications published with impediments).

(3) If the FEDERAL REGISTER publication does not properly describe the authority sought because of ministerial error, applicant shall inform the Interstate Commerce Commission within 10 days of the publication date.

(g) *Changing the request for authority after notice of the application appears in the* FEDERAL REGISTER. (1) After notice of an application is published in the FEDERAL REGISTER, applicants are not permitted to file amendments to their proposal, unless specifically required to do so by the Commission because of an "impediment" in the application. Any such impediment will be indicated in the FEDERAL REGISTER publication.

(2) If an impediment is noted, applicants must file a pleading suggesting a "cure" to the impediment and/or con-

taining legal argument within no less than 50 days or more than 55 days of the FEDERAL REGISTER publication. Also, the pleading must contain a certification that a copy of this pleading has been served, simultaneously, upon all parties of record. Failure to comply with these provisions will result in the dismissal of the application.

(3) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days from the date applicants' pleading is filed. (Protestant's pleading will be filed in addition to the evidence previously submitted within the time frame noted in § 1100.240(h) *infra*).

(4) If replies to applicants' pleading are filed (under paragraph (g)(3) of this section) applicants may file an (optional) rebuttal within 15 days from the due date of the replies in paragraph (g)(3) of this section. This (optional) pleading will be in addition to any evidence previously submitted by applicants in compliance with rule 240(c) *supra.*

(h) *After publication in the* FEDERAL REGISTER. (1) Interested persons have 45 days to file comments at the Commission. See § 1100.241.

(2) If no one opposes the application, it will be decided using the information submitted with the application.

(3) Applicants are required to furnish a copy of the application to any interested person. The request for a copy shall be made to applicants' representative (noted in the FEDERAL REGISTER publication) and shall contain a check for $10 payable to applicants' representative. This fee will cover (at least partially) reproduction and mailing costs. Applicants' representative need not supply copies to any person not sending the appropriate payment. Applicants' representative is required to mail the copy within 3 days of the request being received.

(4) If the application is opposed, opposing parties are required to send a copy of their protest to the applicants, see § 1100.241(a)(2).

(i) *Filing a reply statement.* (1) If the application is opposed, applicants may file a reply to the protests. This reply statement is due at the Commission within 60 days of the FEDERAL REGISTER publication.

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement shall be verified (unless it consists strictly of legal argument), and a copy served upon protestants.

(j) *After all statements are submitted.* (1) When the proceeding is to be handled under the modified procedure a decisional body will review the evidence and serve an initial decision on the parties.

(2) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

(k) *Applicant withdrawal.* If applicants wish to withdraw an application, they shall jointly request dismissal in writing. This request shall be directed to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the docket number of the case.

[46 FR 4930, Jan. 19, 1981]

§ 1100.241 How to oppose finance applications.

(a) *Filing a protest to an acquisition application.* (1) Protests to an acquisition application (filed under 49 U.S.C. 11344) shall be filed (received at the Commission), within 45 days from the date the application is published in the FEDERAL REGISTER.

(2) A protest filed under these rules shall also be served upon applicants' representatives.

(3) Failure to file timely a protest waives further participation in the proceeding.

(b) *Contents of a protest.* (1) Protests shall be verified.

(2) All information upon which the protestant plans to rely shall be put in the protest including:

(i) The grounds upon which the protest is made and the protestant's interest in the proceeding;

(ii) All facts, matters, and things relied upon by the protestant in opposing the application; and

(iii) A request for oral hearing if one is desired. See 49 CFR 1100.242.

(3) A protestant may include, in the protest, a request that the Commission allow for (i) additional eviden-

tiary submissions from the parties to a proceeding or (ii) further procedural steps to develop the evidentiary record (e.g. discovery) in a proceeding. The request must demonstrate that this procedure is necessary to resolve the *specific issues* giving rise to the request.

If the Commission finds, either upon its own motion, or that of a party to a proceeding, that the evidentiary record requires supplementation, it shall issue a decision indicating the precise nature of the additional information required of the parties and the time frames within which such information must be submitted. Upon receipt of all such information the record of evidence will be closed and the case will go forward to decision.

(c) *To whom the protest is sent.* (1) An original and one copy of the protest is to be sent to the Office of the Secretary, I.C.C., Washington, D.C. 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(2) Concurrently with the filing in paragraph (c)(1) of this section, a copy shall be sent to applicants' representative(s).

(d) *Obtaining a copy of the application.* A copy of the application is available for inspection at the Commission's offices in Washington, D.C., or the regional office of each applicant's domicile. In addition, applicants' representative is required to send a copy to interested persons upon payment of a $10.00 charge. See 49 CFR 1100.240(h)(3).

(e) *Withdrawal by protestant.* A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicants in writing.

[46 FR 4932, Jan. 19, 1981]

§ 1100.242 Procedures relating to oral hearing.

(a) *Requests for oral hearing.* It is the policy of the Commission to handle motor finance application proceedings under § 1100.240 using the modified procedure if at all possible.

(1) If a person believes that a proceeding should be orally heard because of the significance of the case, or because material issues are in dispute, the person may request oral hearing. A request for oral hearing may be made at any time during the pendency of a proceeding.

(2) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page references).

(3) The person requesting a hearing shall further indicate the approximate number of witnesses to be presented, an estimate of the hearing time required for such presentation, and a suitable location for the hearing.

(b) *Designation of case for oral hearing.* (1) The Commission will determine whether an assignment for oral hearing should be made, either before or after notice to interested persons of the filing of the application has been published in the FEDERAL REGISTER and the period for filing protests has expired.

(2) Notice of the time and place of any hearing, conference, or other proceedings will be given to interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure.

(3) Unless a request for oral hearing is specifically granted (under paragraph (b)(2) of this section) it is deemed denied.

(c) *Change of place or time of assigned hearing.* (1) A request by any party for a change in the time or place of an assigned hearing shall set forth emergency circumstances warranting the change; shall be in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing, and shall be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission.

(2) The applicants' representatives, protestants, and those who request notice of changes in time or place of hearing, conference, or other proceedings will be informed of any changes if notice is given by mail. If telegraphic

notice becomes necessary, notice of any changes will be given by telegram only to those who request telegraphic notice at their expense.

(d) *Applicant's withdrawal.* Upon receipt of an order or notice of a hearing assignment, applicants who no longer intend to proceed to hearing shall immediately and jointly request dismissal of their application, with appropriate notification to all protestants, failing which applicants or their representatives, or both, may be subject to censure.

(e) *Failure of protestant to appear at hearing.* The failure of any person filing a protest to an application to appear at a scheduled hearing shall be construed as a waiver of the person's rights to participate further in the proceeding. Additionally, that person and any representative responsible for participation in the proceeding may be subject to censure for failure to appear.

[46 FR 4932, Jan. 19, 1981]

§ 1100.243 General rules governing the application process.

(a) *Contacting another party.* When a person wishes to contact another party or serve a pleading on that party, it shall do so through the party's representative (if any).

(b) *Serving copies of pleadings, and the certificate of service.* (1) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(2) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (b)(1) of this section.

(3) All motions and replies shall be served on all parties.

(4) All pleadings mailed to the Commission in Washington, D.C., should be addressed to "Office of the Secretary, I.C.C., Washington, D.C., 20423".

(c) *Copies.* (1) An original and *two* copies of acquisition applications must be filed.

(2) All other material forwarded to the Commission in Washington, D.C., shall consist of an original and one copy.

(d) *Requests for extensions of time.* (1) Requests for extensions of time may be granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(2) No extension will be granted for more than 3 working days.

(e) *Verification of statements.* (1) All statements and shipper certifications (except motions to strike, replies thereto, and other pleadings which consist only of legal argument) must be verified by the person offering the statement.

(2) The manner of verification must be as follows:

I, ————————, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this statement. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

(f) *Caption summary.* The caption summary which must accompany all applications shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries.

[46 FR 4932, Jan. 19, 1981]

§ 1100.244 Processing of temporary authority applications filed under 49 U.S.C. 11349 corresponding to applications filed under 49 U.S.C. 11344 or 10926.

(a) *Applications governed by these rules.* These rules govern the handling of applications filed for temporary authority to operate motor carrier properties sought to be acquired by the applicants under separately filed applications under

(1) 49 U.S.C. 11344 (for authority to consolidate, purchase, merge or lease operating rights and properties, or to acquire control of motor carriers), and

(2) 49 U.S.C. 10926 (for the transfer of motor carrier certificates and permits).

(b) *Procedures used generally.* Since the basis for filing applications for temporary authority under these rules is to prevent destruction or injury to motor carrier properties sought to be

acquired under 49 U.S.C. 11343 and 11344 or 10926 these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided by an appropriate decisional body without hearings or other formal proceedings. However, the rules do permit the Commission, where it is feasible, to publish notice of temporary authority applications, and applications may be opposed.

(c) *Starting the application process.* (1) Persons seeking temporary authority under this section shall properly complete an application. [See 49 CFR Part 1003 and § 1002.1 regarding forms and filing fees].

(2) *Note.* An application for temporary authority may only be filed concurrently with, or subsequent to, the filing of a related application under 49 U.S.C. 11344 or 10926.

(d) *Information to be submitted by applicants.* The completed application form contains all of the information necessary to allow the Commission to decide a case. It consists of applicants' entire case and shall contain all of the information upon which applicants intend to rely.

(e) *Where the application is sent.* (1) The original and two copies of the application shall be sent to the Interstate Commerce Commission, Office of the Secretary, Washington, D.C., 20423 along with the application fee.

(2) Copies of the application shall be sent by applicants to the persons and State officials specified on the application form.

(3) *Provided that,* for an application for temporary authority which is filed subsequent to the filing and FEDERAL REGISTER publication of the related acquisition transaction (under 49 U.S.C. 11344 or 10926) applicants shall serve a copy of the temporary authority application upon all parties of record without charge as of the date of the filing.

(f) *Commission review of an application.* (1) Where an application for temporary authority is filed concurrently with the related acquisition application (under 49 U.S.C. 11344 or 10926), notice of the filing of the temporary authority application will appear in the FEDERAL REGISTER publication of the corresponding permanent transaction. The FEDERAL REGISTER publication will be of the decision-notice in the section 11344 proceeding, and of the service conditionally authorized in the section 10926 proceeding.

(2) A concurrently filed temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon after its filing as possible. These rules do not provide for any specific time period for the filing of opposition to concurrently filed temporary authority applications. A case may be decided prior to the FEDERAL REGISTER publication of the related 49 U.S.C. 11344 or 10926 proposal.

(3) Where an application for temporary authority is filed subsequent to the filing of a related 49 U.S.C. 11344 or 10926 application to which protests have been filed, the Commission will seek to refrain from deciding the temporary application until at least 20 days from the date applicant served protestants with a copy of the temporary authority application. This procedure, when employed, will afford protestants of record an opportunity to file opposing comments in the temporary application proceeding. However, the Commission will take immediate action if warranted.

(4) A copy of the Commission's decisions will be served upon all parties of record.

(g) *Who can oppose an application.* A protest to an application filed for temporary authority under these rules may only be filed by persons who oppose, or intend seasonably to oppose, the related application filed under 49 U.S.C. 11344 or 10926.

(h) *Acquiring notice of the application.* Notice of the filing of an application may be afforded potential protestants in one of the following ways:

(1) Where the temporary application is filed concurrently with the acquisition transaction under 49 U.S.C. 11344 or 10926, notice of the acquisition transaction will appear in the FEDERAL REGISTER publication. (See 49 CFR 1100.244 (f)(1).)

(2) Where the temporary authority application is filed subsequent to the filing and FEDERAL REGISTER publication of the related acquisition transaction under 49 U.S.C. 11344 or 10926, applicant shall serve a copy of the temporary authority application without charge on parties of record as of that date. (See § 1100.244 (e)(3).)

(3) A copy of the temporary authority application is available for inspection at the Commission's Offices in Washington, DC, and the Regional Office(s) in which each applicant is domiciled.

(i) *Contents of a protest.* (1) A protest to an application for temporary authority shall be in writing, but in no particular form. It may, for example, consist of a telegram, letter, or pleading.

(2) The protest shall state the protestant's interest in the proceeding and the specific grounds upon which protestant relies in opposing the temporary authority application.

(3) The protest shall also indicate that a copy has been served on applicants' representative(s).

(j) *To whom the protest is sent.* (1) Only the original need be sent to the Commission (Office of the Secretary, Washington, DC, 20423).

(2) A copy of the protest shall be served on applicants' representative(s).

APPENDIX A—INSTRUCTIONS FOR FORMS OP-F-44 AND OP-F-45

Instructions

1. *Reference*—See 49 U.S.C. 11343-11344; 49 CFR 1100.240.

2. *Filing Fee* Applicant must submit, with the application, a check or money order payable to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Appendices*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice to Competitors*—Applicants are nt required to give notice to competitors. Notice to interested persons of the filing of the application will be given by the publication of a summary of the authority sought in the FEDERAL REGISTER.

8. *Amendments*—Amendments to applications will not be permitted after notice of the filing of the application has been published in the FEDERAL REGISTER, unless the Commission requires the application to be amended to cure a legal impediment. Notice of an impediment will appear in the FEDERAL REGISTER publication of the authority sought.

9. *When Additional Space Required*—Attach to the application supplemental sheets making specific reference to the supplements.

10. *Information Required*—Must be given unless not known, unavailable or inapplicable. However, an explicit statement to the effect shall be made in the application, stating why the information has not been given.

11. *Hearing*—Requests for postponement, or change of location of a hearing, must be made in writing and filed with the Commission within 10 days of the date of the notice assigning the proceeding for a hearing. Any request must state the emergency circumstances warranting the change. An ample supply of exhibits to be used at a hearing should be prepared so that copies are available for all parties, and where practicable should be distributed in advance.

12. *Related Applications*—Applicant shall bring to the Commission's attention any application it has filed under any other provision of title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. Directly relat-

ed applications must be filed contemporaneously, and under the same cover.

13. *Federal Register Summary*—The applicant shall prepare a summary of the authority sought for the FEDERAL REGISTER in the form prescribed by the Commission. The caption summary shall indicate, in part, whether an application has been filed under (a) 49 U.S.C. 11349 for temporary authority and/or (b) another section of the Act which is directly related to the proposed finance transaction.

INSTRUCTIONS FOR FORM OP-F-46

Instructions

1. *Reference*—See 49 U.S.C. 11349 and 10926, 49 CFR 1100.244.

2. *Fees*—Applicant shall submit with the application a check or money order made out to the Interstate Commerce Commission for the amount listed at 49 CFR 1002.2.

3. *Form*—If this form is not used, application shall be typewritten or printed on paper 8½ inches wide and 13 inches long, with a margin of 1½ inches on the left side and 1 inch on the right side. Indent quotations and use only one side of the paper. White-line blueprints which cannot be reproduced by photography are not acceptable.

4. *Exhibits*—Shall be folded to conform to the size of the application.

5. *Manner of Execution*—The original application shall be signed in ink by applicant(s), if individual(s); by all general partners, if a partnership; and if a corporation, association, or other similar form of organization, by an executive officer having knowledge of all matters in the application.

6. *Number of Copies*—File with the Interstate Commerce Commission at Washington, D.C. 20423, the original and (two) copies of each application. Concurrently furnish one copy to each of the Regional Managing Directors of the Commission's Office of Consumer Protection in which are located the headquarters of the carriers involved in the application, and upon written request, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission or Official) having authority to regulate the business of transportation by motor vehicle in each State in or through which operations may be conducted under the operating authorities involved in the application. Signatures on copies may be stamped or typed. A summary of the application shall be delivered by first-class mail to the appropriate official (described above) of the State in which the headquarters of applicants are located.

7. *Notice*—If applicants file this application subsequent to the filing of a related application under 49 U.S.C. 11344 or 10926, they shall serve a copy of this application upon all parties of record to date. If this application is filed concurrently with the corresponding application under 49 U.S.C. 11344 or 10926, the Commission will give notice of both filings by FEDERAL REGISTER publication of a summary of the authority sought. (Applicants shall prepare the summary in conjunction with the filing of the application under 49 U.S.C. 11344 or 10926).

8. *When Additional Space Required*—Attach to the application supplemental sheets, making specific reference to the supplements in the form. Do not paste riders to any page.

9. *Lease or Other Agreement*—The written instrument filed as Exhibit B should provide for a specific monetary monthly rental or management fee commensurate with the value of the properties to be operated temporarily. Temporary authority should not be requested for the purpose of making legal a violation of 49 U.S.C. 11343.

10. *General*—No consideration will be given to an application for temporary authority under 49 U.S.C. 11349 unless a corresponding application under 49 U.S.C. 11344 or 10926 has been filed.

[46 FR 4933, Jan. 19, 1981]

§ 1100.245 Rules governing the issuance of Certificates of Registration under section 206(a) of the act. (Rule 245)

(a) *Scope of rules.* These rules govern: (1) The matter of giving notice to interested persons, by publication in the FEDERAL REGISTER, of the filing of applications for State certificates of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, in connection with which the applicant, also desires to engage in transportation in interstate and foreign commerce under the provisions of section 206(a)(6) of the act, and certain related matters.

(2) The filing with the Interstate Commerce Commission of applications for Certificates of Registration based upon intrastate certificates of public convenience and necessity issed by a State Commission which contain a concurrent finding that the public convenience and necessity require operations in interstate and foreign commerce in accordance with the provisions of section 206(a)(6) of the act.

(3) The filing with, and the handling by, the Interstate Commerce Commission of petitions for reconsideration of the decisions of State Commissions,

made pursuant to the provisions of section 206(a)(6) of the act, finding that the public convenience and necessity require motor common carrier operations in the transportation of property or passengers, in interstate and foreign cvommerce, which do not exceed the scope of the concurrently authorized motor common carrier operations in intrastate commerce contained in certificates of public convenience and necessity issued by such State Commissions. Except as otherwise herein provided, the rules of general applicability shall govern.

(b) *Notice to interested persons of the filing of State Applications.* In accordance with such rules and regulations as may be prescribed by the State Commissions, any persons seeking an intrastate certificate of public convenience and necessity, who or which also desires to engage in transportation in interstate and foreign commerce pursuant to section 206(a)(6) of the act, shall so notify the State Commission with which the intrastate application is filed at the time of filing the intrastate application. Notice to interested persons of the filing of such an application, and of the applicant's desire also to engage in transportation in interstate and foreign commerce, shall be given by the publication in the FEDERAL REGISTER of a summary of the authority sought as prepared by the State Commission and transmitted to the Interstate Commerce Commission at Washington, D.C. (See approved Form No. 7 in Appendix B.) In order to afford interested persons a reasonable opportunity to be heard, such summaries must be forwarded to the Interstate Commerce Commission sufficiently in advance of any hearings that may be scheduled on the application so noticed. Except as otherwise may be required by the State Commission, no other notice by applicant to interested persons is necessary.

(c) *Conduct of, and participation in, State Commission application proceedings.* Subject to the requirement of section 206(a)(6) of the act, that interested persons be afforded a reasonable opportunity to be heard, the rules and regulations of the State Commission with which the intrastate application is filed shall govern the conduct of, and participation in, any State hearings or other State Commission proceedings that may be held with respect to such application, notice of the filing of which has been published in the FEDERAL REGISTER pursuant to paragraph (b) of this section. Protests and requests for information concerning the time and place of State Commission hearings or other proceedings any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission. The record made in the State Commission proceeding shall be made available to the parties to such proceeding upon payment of such costs as may be fixed or prescribed by the State Commission.

(d) *Applications to the Interstate Commerce Commission for Certificates of Registration.* (1) Within 30 days after service by the State Commission of a certificate of public convenience and necessity authorizing motor common carrier operations in intrastate commerce and containing the recitations required by section 206(a)(6) of the act, the holder of such State certificate shall file with the Interstate Commerce Commission at Washington, D.C., an Application of Motor Certificate of Registration, Form BOR-100, § 1003.1 of this chapter. Such application shall be prepared in accordance with and contain all information called for in the form of application and the instructions thereto. Copies of such application shall be furnished in such number, and be filed and served in the manner and upon the persons specified in the form of application.

(2) Upon receipt, an application for a Certificate of Registration will be assigned a docket number; and thereafter notice of the date of filing of the application and the docket number assigned thereto will be transmitted by the Interstate Commerce Commission to the applicant and those persons upon whom copies of the application were served by the applicant as specified in the form of application; and thenceforth all further proceedings

therein before the Interstate Commerce Commission will be under such docket designation.

(3) Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, shall be deemed to be a party in the corresponding application proceeding instituted in accordance with paragraph (d)(1) of this section. No other person will be permitted to participate in such proceeding except upon a showing of substantial reasons in a petition submitted in accordance with Rule 70 of the Commission's rules of practice.

(4) Except for good cause shown, and upon leave granted, failure to file an application for a Certificate of Registration within the 30-day time period specified in paragraph (d)(1) of this section shall be construed as a waiver of any right thereafter to file for and obtain such a certificate.

(e) *Petitions for reconsideration of State Commission decisions made the subject of applications for Certificates of Registration*—(1) *Parties.* Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, may file with the Interstate Commerce Commission at Washington, D.C., a petition seeking reconsideration of the State Commission decision which is the basis for an application for a Certificate of Registration.

(i) The original and six copies of every pleading, document, or paper permitted or required to be filed under this section, shall be furnished for the use of the Commission.

(ii) A petition seeking reconsideration of an order of the Motor Carrier Board entered under section 210a(a) or 311(b) of the act must be filed within 20 days after the date of service of the order. Within 20 days after the filing of such petition with the Commission any interested person may file and serve a reply thereto.

(iii) A petition seeking reconsideration of an affirmative order of the Motor Carrier Board entered pursuant to the rules and regulations governing transfers of property brokers' licenses, Part 1045 of this chapter, passenger brokers' licenses, Part 1133 of this chapter, motor carrier operating rights, Part 1132 of this chapter, water carrier operating rights, Part 1141 of this chapter, and freight forwarder permits, Part 1151 of this chapter, must be filed within 20 days following publication of a synopsis of such order in the FEDERAL REGISTER. In such a petition the matters claimed to have been erroneously decided and the alleged errors must be specified with particularity. If the petition contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonable be submitted in affidavit form. Within 20 days after the final date for filing of such petitions with the Commission, any interested person may file and serve a reply thereto.

(iv) Every application requesting authority to change, cancel, or reissue a tariff matter under suspension or continued in effect as a result of suspension shall include a certificate showing simultaneous service thereof upon all parties to the investigation and suspension proceeding. Service shall be made in the manner specified in Rule 20 of Subpart A.

(2) *Filing requirements.* Except for good cause shown, and upon leave granted, petitions under this rule shall be filed within 30 days after the date of the filing of an application with the Interstate Commerce Commission pursuant to paragraph (d)(1) of this section for a Certificate of Registration authorizing motor common carrier operations in interstate and foreign commerce under the provisions of section 206(a)(6) of the act, and such petition shall be filed under the docket number assigned to the related application proceeding.

(3) *Contents.* Any such petition shall specify with particularity the facts, matters, and arguments relied upon; and unless a copy of such record already has been submitted by another petitioner, such petition shall be accompanied by a certified copy of the complete record made before the State Commission, including a transcript of any testimony taken and any exhibits filed before such State Commission, such copy to be provided by, and at

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the expense of, the petitioner. The petition shall conform in all respects to requirement of Rules 13 and 15 of this Commission's rules of practice. The original and 6 copies of the petition, and one certified copy of the record made before the State Commission, shall be furnised for the use of the Interstate Commerce Commission.

(4) *Replies to petitions.* A reply to a petition filed under these rules may be filed and served within 20 days after the final date for filing such petitions. The original and 6 copies of the reply shall be furnished for the use of the Interstate Commerce Commission.

(5) *Service of petitions and replies.* Copies of each petition and reply filed under these rules shall be served on the State Commission involved and on all other parties to the State Commission proceeding in accordance with the requirements of Rule 20 of the Commission's rules of practice.

(6) *Effect of petitions.* The filing under these rules of a petition for reconsideration shall not preclude or affect the institution of the motor carrier operations in intrastate commerce authorized by the State certificate; and failure seasonably to file a petition for reconsideration under these rules will be construed as a waiver of opposition and further participation in the related application proceeding for a Certificate of Registration.

(f) *Disposition of applications for Certificates of Registration and related petitions for reconsideration.* Applications for Certificates of Registration and related petitions for reconsideration filed under these rules will be handled together and processed in a single proceeding and will be disposed of by the division of the Interstate Commerce Commission to which these matters may be assigned, acting as an Appellate Division. Except as the Interstate Commerce Commission may, in its discretion, otherwise direct, a decision and order issued by the Appellate Division disposing of such an application and petition will be administratively final and petitions by any of the parties for reconsideration of such Division's actions will not be entertained.

(g) *Disposition of unopposed applications for Certificates of Registration.* Where the State Commission proceeding which resulted in the issuance of the State Certificate sought to be made the basis of a Certificate of Registration was unopposed, or where petitions for reconsideration of the finding of the State Commission that the public convenience and necessity require operations in interstate and foreign commerce are not seasonably filed, the application for a Certificate of Registration will be disposed of in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings.

§ 1100.246 Rules pertaining to proceedings for the discontinuance or change of train or ferry service. (Rule 246)

(a) *Scope of special rules.* These special rules govern procedure before the Commission in proceedings commenced by carrier subject to part I of the Interstate Commerce Act, under and pursuant to the provisions of section 13a of said Act, upon a notice under paragraph (1) of said section or by a petition under paragraph (2) thereof, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

(b) *General rules otherwise applicable.* Except as provided otherwise in these special rules, proceedings upon notices and petitions filed under section 13a shall be governed by the rules of general applicability.

(c) *Notice and petitions by carriers.* A notice filed under paragraph (1), and a petition under paragraph (2), of said section 13a shall be prepared in accordance with and contain the information called for by rules and regulations then in force with respect to such a notice or petition. See Part 1122 of this chapter.

(d) *Notice to interested parties.* Notice of the institution of any investigation or of the time and place of any hearing, conference, or other proceeding will be given by the Commission to the carrier of carriers involved, the Governor and appropriate regulatory agency of each State in which the train or ferry affected is operated, protestants, and other interested par-

ties of record, by mailing to them the order or notice instituting the investigation or assigning the hearing, conference, or other proceeding. Similar notice will be given to the same parties of changes in the time or place of hearing, conference, or other proceeding when time permits notice by mail; but, if telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who have requested telegraphic notice at their expense.

(e) *Participation at hearings without intervention.* In an investigation proceeding under section 13a(1), or in proceedings upon a petition filed under section 13a(2), an appearance may be entered at the hearing without filing a petition in intervention or other pleading, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.

(f) *Complaints and protests.* When a notice is filed with the Commission pursuant to section 13a(1), proposing to discontinue or change, in whole or in part, the operation or service of any train or ferry between a point in one State and a point in any other State or in the District of Columbia, any interested person opposed to such proposal may file with the Commission a complaint or protest by telegram, letter, or other writing, of which only an original need be filed. Service thereof upon the carrier proposing the discontinuance or change is not required. A complaint or protest should identify the carrier and the particular train or ferry involved, and should state the interest of the complainant or protestant and the grounds for the opposition. The complaint or protest must be filed with the Commission in Washington, D.C., not later than 15 days before the date when the carrier proposes to make effective the discontinuance or change. The failure to reply will not be construed as an admission of any allegations contained in the protest or complaint.

(g) *Petitions for reconsideration of orders instituting an investigation.* Petitions for reconsideration of an order instituting an investigation in relation to a proposed change or discontinuance may be filed by the carrier or carriers affected within 15 days after the date of service of the order. An original and 6 copies shall be furnished for the use of the Commission, and copies thereof shall be served upon the persons to whom copies of the notice of the carrier were required to be mailed by the rules and regulations prescribed by the Commission. See § 1122.5 of this chapter. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 15 days after the filing of such petition with the Commission.

(h) *Reconsideration of decision not to institute an investigation.* A decision not to institute an investigation concerning a proposed discontinuance or change of service may be made the subject of a petition for reconsideration by any interested person, provided the petition reaches the Commission at least two workdays prior to the effective date of the proposed discontinuance or change of service. If an order is desired requiring continuance of the service pending hearing and decision upon investigation, the petition should reach the Commission at least 12 days before the discontinuance or change is scheduled to become effective. (Under section 13a(1) of the act, an order of the Commission requiring continuance of the operation or service, pending hearing and decision in an investigation, must be served upon the carrier or carriers affected thereby at least 10 days before a discontinuance or change would otherwise become effective.) For the purposes of this section, a workday shall be considered any day except Saturday, Sunday, or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a workday within the meaning of this section.) Petitions submitted under this paragraph shall be filed with the Secretary of the Commission by 4 p.m., United States Standard Time (or by 4 p.m.

Local Daylight Saving Time if that time is observed in the District of Columbia). Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. The request for reconsideration shall contain the following prefatory statement: "This matter requires expedited handling under Rule 246 of the Commission's rules of practice." If in writing, an original and six copies of the petition shall be furnished for the use of the Commission. Telegraphic notice or its equivalent must be given by the petitioner to the carrier or carriers affected, and certification that such notice has been given must accompany the request for reconsideration. Action may be taken upon the petition without awaiting a reply, but if a reply is received prior to a decision upon the petition it will be given consideration. A petition not timely filed will be rejected by the Secretary.

(i) *Protests.* Section 13a(2) requires this Commission to conduct a full hearing in the State involved, before it may grant a petition filed thereunder for authority to discontinue or change the operation or service of any train or ferry operated wholly within the boundaries of that State. It is not necessary, therefore, that persons opposed to such a petition file a protest in order to obtain a hearing; but interested persons may file protests by complying with Rule 38 or they may register their opposition by letter addressed to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, for the purpose of receiving notice of the time and place of the hearing. See paragraph (e) of this section in regard to participation at hearing.

§ 1100.248 Implementation of Pub. L. 91-375, Postal Reorganization Act (Motor carrier licensing provisions). (Rule 248)

(a) *Scope of rules.* These special rules govern the filing and handling of applications seeking the right to operate pursuant to either a Postal Certificate of Public Convenience and Necessity or a General Postal Certificate of Exemption authorizing operation, in interstate or foreign commerce, by motor vehicle in the transportation of mail.

(b) *Applications for postal certificates of public convenience and necessity.* (1) The application form (Op-Or-10) shall be available from the Secretary, Interstate Commerce Commission, and shall be completed in duplicate, and transmitted to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and a copy thereof shall be sent to the transportation regulatory commission (or, if none, the Governor) of each State within which operations are sought to be performed.

(2) Attached to the application shall be a true copy of applicant's contract with the Postal Service (or its predecessor Post Office Department), which contract must have been in force on the effective date of section 5215 of the Postal Act.

(3) If applicant is a successor in interest to a qualifying star route carrier, evidence of continuity of star route service and carrier identity must be furnished (this may be done in letter form duly sworn and notarized).

(4) The application form provides space for a description of the territory served by the applicant on or before the effective date of section 5215. Here applicant should describe the territorial extent of operations performed pursuant to its contract in force on the effective date, such description being in terms of the appropriate political division or subdivision (i.e., State, county, city, village, et cetera) within which service was authorized by contract. Authority may be granted only commensurate with the service covered by applicant's contract; therefore, applicants are cautioned to be specific in delineating the territory sought in order to avoid delays in processing their applications.

(5) Notice to the public of any such application will be made by publication in the FEDERAL REGISTER. Provision will be made for the filing of protests within 30 days from the date of publication, although it is not contemplated that protests will, in fact, be filed.

(6) Upon determination that an applicant is qualified to receive "grandfather" authority, and upon compliance by applicant with sections 215 and 221(c) of the Interstate Commerce

Act, and with the rate-filing procedures established by this Commission, a Postal Certificate of Public Convenience and Necessity will be issued, authorizing the transportation of mail from, to, or between points in the involved territory.

(7) All further proceedings, including petitions for reconsideration, shall be handled in the manner specified in this Commission's rules of practice.

(c) *Applications for inclusion within general postal certificate of exemption.* The class of carriers to which such certificate of exemption is applicable is defined as all star route, mail messenger and contract motor vehicle operators, whose for-hire motor carrier operations are confined to a single State, and who, on the effective date of section 5215 of the above-entitled Postal Act, hold a contract for the transportation of mail wholly within a single State. Upon submission to the Commission of a copy of such contract, the name of the carrier's representative to whom inquiries may be made, and the carrier's written request therefore, such carrier shall be included within the terms of the general postal certificate of exemption which reads as follows:

General Postal Certificate of Exemption, Designated Single-State Motor Carriers Affected By The Postal Reorganization Act (Pub. L. 91-375).

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 3d day of March 1971.

After due investigation, it appearing that any motor carrier having complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and having complied with all the requirements established by this Commission in its report in Ex Parte No. MC-86, and lawfully engaging in operations solely within a single State in the Transportation of mail; that the transportation of mail in interstate or foreign commerce performed by him is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by this Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in the Interstate Commerce Act; that he, therefore, is entitled to inclusion within a general postal certificate of exemption in accordance with the provisions of section 204(a)(4a) of part II of said act; and this Commission so finding:

It is ordered, That the said motor carrier be, and it is hereby, granted this general postal certificate of exemption, which during the period it shall remain effective and unrevoked, shall exempt the said motor carrier from compliance with the provisions of part II of said act in respect of transportation of mail in interstate or foreign commerce, and it is hereby issued to said motor carrier.

It is further ordered, That this general postal certificate of exemption shall be effective from the date hereof and shall remain in effect until revoked in accordance with the provisions of said act.

By the Commission.

ROBERT L. OSWALD,
Secretary.

§ 1100.249 Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code, 84 Stat. 768, 39 U.S.C. 5208. (Rule 249)

(a) *Definitions.* For the purposes of this section the following words and terms, except as otherwise indicated in the context of this section, are to be construed as follows:

(1) "Postal Service" means the U.S. Postal Service, 39 U.S.C. 201.

(2) Whenever, a "section" is cited, it refers to a provision of title 39, United States Code, as revised and reenacted.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Motor carrier" or "carrier" means a common carrier by motor vehicle as defined in subsection (5) of section 5201 of title 39, United States Code, 39 U.S.C. 5201.

(b) *Applicability.* The provisions of this section shall apply to all orders or determinations of the Postal Service under section 5203 (39 U.S.C. 5203) directing a motor carrier to transport mail.

(c) *Filing and content of orders or determinations.* (1) *General.* All orders or determinations shall be filed by the Postal Service with the Commission at its office in Washington, D.C. and shall conform to the provisions of subparagraphs (2) and (3) of this paragraph.

(2) *Content.* Each order or determination of the Postal Service shall in-

clude: (i) The full and correct name and business address of the motor carrier (ii) a description of the main transportation service required, (iii) a specification of the operating authority held by the carrier which corresponds to the mail transportation required, and (iv) a showing that the order or determination is consistent with orders of the Commission under sections 5207 and 5208 (39 U.S.C. 5207 and 5208), if any, or that the Postal Service and the carrier have agreed that the compensation for the transportation and service connected therewith is fair and reasonable. Further, each order or determination issued shall set forth in a conspicuous place on the face thereof, in bold face type, a clear statement that the order or determination is concurrently filed with the Interstate Commerce Commission at Washington, D.C., that it is being simultaneously deposited with the Director, Office of the Federal Register, and that any protest seeking termination thereof under subsection (f) of section 5203 (39 U.S.C. 5203) must be filed in 15 days of the date of publication in the FEDERAL REGISTER. This statement may also include reference to the penalty provisions of section 5206 (39 U.S.C. 5206, and such other information as the Postal Service deems appropriate.

(3) *Copies; service.* The original and six copies of each order or determination issued under this section shall be filed with the Commission, and one copy of the order or determination simultaneously shall be served upon the motor carrier specified therein and upon any other person known to be interested, in such a manner so as to be received on the date the original is filed with the Commission, and a copy also should be simultaneously deposited with the Director, Office of the Federal Register, for publication therein as notice to all other interested persons. A certificate shall be executed by an authorized official of the Postal Service, showing upon whom simultaneous service has been made. The order or determination filed with the Commission and the envelope of transmittal to the Commission should be clearly marked; "Mail Transportation Service Order (or Determination)."

(d) *Protests seeking termination of Postal Service orders or determinations, and replies thereto*—(1) *General.* A motor carrier subject to an order or determination of the Postal Service, or any of the carrier's other customers, may protest to the Commission and request termination of the order or determination. Such protests shall be restricted to the matter of showing that performance by the carrier, of the required mail transportation service would be detrimental to the carrier or to its other customers, or that the carrier does not operate equipment suitable for the transportation of mail, and shall conform to the provisions of paragraphs (d) (2), (3), and (4) of this section.

(2) *Content.* The protest for termination of an order or determination filed under this section must identify the issued order or determination (i) by reference to the name and address of the motor carrier shown in the order or determination, (ii) the number or other identification assigned thereto by the Postal Service, and (iii) specific citation to the volume, page, and date of publication in the FEDERAL REGISTER, i.e., ——— FR ——— 197—." Facts relied upon in support of the protest must be verified as provided in Rule 50 of the Commission's General Rules of Practice.

(3) *When filed.* Protests requesting termination of an order or determination filed under this section will not be considered unless made in writing and filed with the Commission at Washington, D.C. within 15 days of the date of publication of the order or determination in the FEDERAL REGISTER.

(4) *Replies.* Replies confined to rebuttal of such protests may be filed within 10 days of the date on which the protest was filed with the Commission.

(5) *Copies; service.* The original and *six* copies of each protest or reply shall be filed with the Commission, and one copy simultaneously shall be served on the opposing party(ies). A certificate shall be executed stating that simultaneous service has been made. The protest or reply and the envelope of transmittal to the Commis-

sion should be clearly marked: "Protest (Reply)—Mail Transportation Service Order (or Determination)," and be delivered free of all charges. (Copies for service on the Postal Service shall be addressed to the Assistant General Counsel.

(e) *Petitions for reconsideration.* Petitions for reconsideration: (1) Of an order terminating an order or determination of the Postal Service, or (2) of a notice declining to order termination of such an order or determination, may be filed by any interested person within 20 days after service of the order or notice of the Commission. As no replies to the petitions for reconsideration under this rule are contemplated in view of the statutory time limitation, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Commission. Such petitions for reconsideration must be clearly marked: "Petition for Reconsideration—Mail Transportation Service Order (or Determination)." Petitioners shall file an original and six (6) copies of the petition with the Commission and one copy thereof shall be served simultaneously on the opposing party(ies), and a certificate of service shall be executed to that effect.

(f) *Withdrawal of Postal Service orders or determinations.* If, within 90 days after the filing of an order or determination by the Postal Service, the motor carrier cited in the order or determination voluntarily agrees and undertakes to perform the required mail transportation service, the Postal Service shall promptly notify the Commission of such action and shall withdraw the Postal Service order forthwith.

[42 FR 23806, May 11, 1977, as amended at 42 FR 34884, July 7, 1977]

§ 1100.250 Rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought. (Rule 250)

(a) *Filing of complaint.* A person seeking elimination of discrimination against shipments of recyclable materials shall file a formal complaint. Such complaint should be so drawn as to fully advise the parties defendant and the Commission of the discrimination against recyclables complained of; make specific reference to the tariffs or schedules containing the rates, fares, or charges occasioning the discrimination against the shipment of recyclable materials, if the claimed discrimination is said to be occasioned by the rate structure; and in all other respects comport with the requirements for the commencement of proceedings as set forth in the Rules of Practice.

(b) *Discrimination defined.* For the purpose of these rules, "discrimination" is understood to encompass, but not be limited to, situations in which carriers charge different rates and/or charges for substantially similar transportation service on recyclable materials which are competitive, in whole or in part, with virgin natural resource materials. Any complainant of the view that the "discrimination" referred to in section 603 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 793 (1974), is other than "unjust discrimination" prescribed by section 2 of the Interstate Commerce Act shall set forth the reasons therefor in said complaint.

(c) *Recyclable materials defined.* For the purpose of these rules; the term "recyclable materials" includes, but is not limited to, commodities shown in Standard Transportation Commodity Code Tariff No. 1-B, Traffic Executive Association—Eastern Railroads, Agent, I.C.C. No. C-998, issued jointly with other agents, effective April 1, 1974, including the following:

STCC No.	Commodity
22	Textile waste garneted or processed.
22 973 15	Noils, ramie.
22 973 25	Noils (combings or comb).
22 973 68	Rovings, jute and istle (ixtle).
32 299 24	Cullet (broken glass).
33 119	Blast furnace or coke oven products, nec.
32 312	Copper matte, speiss, or flue dust.
33 322	Lead matte, speiss, or flue dust.
33 332	Zinc dross, residues, ashes.
33 342	Aluminum residues.
33 398	Miscellaneous nonferrous metal residue.
40 1	Ashes.
40 2	Waste or scrap.

(d) *Filing of answer.* Answers to claims of discrimination shall be so drawn as to fully advise the complainant, any other parties, and the Commission of the defense to the charge of discrimination against the shipment of recyclable materials that the respondent proposes to assert in its defense and otherwise conform to the requirements of the Rules of Practice.

(e) *Procedural handling.* The proceeding following the commencement of the action as set forth in the foregoing rules shall be handled under modified procedure and will be accorded expeditious handling.

(f) *Intervention.* (1) A summary of any complaint filed with the Commission under these rules will be published in the FEDERAL REGISTER as notice to interested parties, (2) Government agencies, environmental and other public interest groups, and trade associations having an interest in the proceeding may intervene as of right by filing a statement of their intention to participate within 20 days from the date that notice of the filing of a complaint is published in the FEDERAL REGISTER. After the expiration of that 20-day period, petitions for leave to intervene must be filed under rule 70 of the rules of practice, 49 CFR 1100.70.

(g) *Other procedures.* In all other particulars, the proceeding shall be governed by the Commission's rules of Practice.

[42 FR 23806, May 11, 1977; 42 FR 34884, July 7, 1977]

§ 1100.251 How to apply for operating authority.

(a) *Applications governed by these rules.* These rules govern the handling of applications for permanent operating authority of the following type:

(1) Applications for certificates and permits to operate as a motor common or contract carrier of passengers or property.

(2) Applications for permits to operate as a freight forwarder.

(3) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(4) Applications for licenses to operate as a broker of motor vehicle transportation.

(b) *Applications for operating authority which require only fitness proof ("fitness only" applications).* There are certain types of authority which can be obtained by an applicant showing only that it is fit, willing and able to perform the service and to comply with the law and Commission regulations. These are listed below. The applicant does not provide any supporting witness testimony. The application can be opposed only on the grounds that applicant is not fit or does not fall within the statutory definition. These applicants shall skip paragraphs (e) and (f) of this section, and substitute the information called for in paragraphs (g) and (h) of this section.

(1) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(2) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(3) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(4) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(5) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).

(6) Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Dept. of Defense.

(7) Motor carrier brokerage of general commodities (except household goods).

(c) *Procedures used generally*—(1) *Modified procedure.* Most cases are handled under the modified procedure. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(2) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding. The rules governing requests for oral hearings are set forth at § 1100.253(i).

(d) *Starting the application process:* Form OP-1.

(1) All applicants shall use form OP-1.

(2) Obtain the form at Commission regional and field offices, or call the Office of the Secretary at 800-424-5230.

(e) *Information to be submitted by applicants (except fitness only applications).* (1) A completed application form, OP-1. (2) A caption summary which describes the authority sought. (3) A separate verified statement from the applicant, as described in paragraph (f) of this section. (4) Verified certifications of witness or shipper support (see the appendix to the OP-1 form).

(i) *Motor common carriers of property.* Applicants for this authority normally file verified certifications of witness or shipper support. Alternatively, an applicant may elect to file other evidence showing that the service proposed will serve a useful public purpose, responsive to a public demand or need. This evidence shall be submitted in part (10) of applicant's verified statement, as shown in paragraph (f) of this section.

(ii) *Water carrier exemption applications.* No shipper or witness support evidence is required.

(f) *Applicant's verified statement (except fitness only applications).* Applicant shall file the information described in this paragraph according to the type of application being filed (see KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A".

KEY FOR REGULAR APPLICATIONS

(1) Motor common carrier of property application
(2) Motor common carrier of passengers application
(3) Motor contract carrier of property application
(4) Motor contract carrier of passengers application
(5) Passenger broker application
(6) Freight forwarder application
(7) Water common carrier application
(8) Water contract carrier application
(9) Water carrier exemption application

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. [all]

(2) Name of witness presenting evidence for applicant and why this person is qualified to speak for applicant (as, position with applicant and experience). [all]

(3) Authority requested in this application. [all]

(4) Brief description of present ICC regulated operations, or, any other transportation experience. Do not submit copies of existing authority unless they are an issue in the application. [all]

(5) Description of equipment. It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). (all except 5)

(6) *Safety evidence.* Motor carriers holding ICC authority should indicate that they are in compliance with D.O.T. safety regulations. New entrants shall state the following:

"I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

NOTE TO APPLICANTS: These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: 800-424-9158.

(7) Service now provided to supporting shipper or witness, if any, or, service pro-

vided within area sought by application. [all]

(8) Description of service that will be provided if this application is granted. State whether services of this type are not now available. [all]

(9) Name and address of persons or shippers now served under contract [4 only].

(10) Any other evidence in support of the application. *Motor common carrier of property applicants:* If no shipper support statements are being provided, applicant shall submit other evidence under this paragraph.

(11) Legal argument supporting the application. [optional for all].

(12) Any oral hearing request [optional for all]. *Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

(g) *Information to be submitted in fitness only applications:*

(1) A completed OP-1 form, except for the appendix.

(2) A caption summary describing the authority sought.

(3) A separate verified statement from the applicant, as described in paragraph (h) of this section.

(h) *The applicant's verified statement in fitness only applications.* Applicant shall file the information described in this paragraph according to the type application being filed (see following KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A".

KEY FOR FITNESS ONLY APPLICATIONS

(1) Motor carrier applications
(2) Property broker applications

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. [all].

(2) Name of witness presenting evidence and why this person is qualified to speak for applicant (as, position with applicant and experience). [all].

(3) Authority requested in this application. [all].

(4) Description of equipment. It is not necessary to list separately each piece. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). [1 only].

(5) *Safety evidence:* Motor carriers holding ICC authority shall indicate that they are in compliance with D.O.T. safety regulations. New entrants shall state the following: "I certify that I have access to and am familiar with all applicable regulations of the U.S. Dept. of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

NOTE TO APPLICANTS: These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: 800-426-1724. [1 only].

(6) *Application under § 1100.251(b)(1):* If the application is to serve a "community not regularly served", describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers.

(7) *Application under § 1100.251(b)(2):* If the application is for transportation services as a direct substitute for complete abandonment of all rail service in a community, state docket number and abandonment approval date by the Commission; give the location of the points sought to be served, and indicate to what portion of the rail line they are adjacent (submit maps where obscure, rural points are involved); certify that rail service was offered at the points for which authority was sought; and, certify that all rail service has been terminated, and give the date, if known. [1 only].

Verification: Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

(i) *Where to send the application.* (1) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(2) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled. A copy of the caption summary only is sent to the state transportation regulatory body of applicant's domicile.

(j) *Commission review of the application.* (1) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the prima facie case).

(i) Minor errors will be corrected without notification to the applicant.

(ii) Materially incomplete applications will be rejected. Applications

that are in substantial compliance with these rules may be accepted.

(iii) A review board will decide whether there is adequate evidence so that the full scope of the authority applicant seeks may be published in the FEDERAL REGISTER. If there is not, the application will be rejected in a letter. An applicant may appeal rejections under paragraph (j)(1) (ii) and (iii) of this section. See § 1100.251(t). If an applicant chooses to resubmit the application, it shall refer to its prior application by docket number and give the ICC fee number stamped on the canceled check so as to avoid a second fee being assessed. If no appeal or resubmittal is made, the fee will not be refunded. The date of refiling will be considered the filed date of the application.

(2) The caption summary will be published in the FEDERAL REGISTER to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

(3) If the FEDERAL REGISTER publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the ICC's Section of Operating Rights as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be correctecd and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion, and may result in an application being rejected without prejudice to refiling.

(k) *Changing the request for authority or filing supplementary evidence after the application is filed.* (1) An applicant may not supplement evidence once the application is filed (unless directed to do so by the Commission).

(2) Amendments to the application are not permissible.

(l) *After publication in the* FEDERAL REGISTER. (1) Interested persons have 45 days to file protests. See § 1100.252.

(2) If no one opposes the application, the grant published in the FEDERAL REGISTER will become effective.

(3) If no one opposes an application for an extension of authority, the grant published in the FEDERAL REGISTER will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the FEDERAL REGISTER will be made effective by a Commission Notice outlining compliance requirements which must be met before applicant commences the proposed service.

(m) *Furnishing a copy of the application package to interested persons.* (1) Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be made in writing to applicant's representative and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant's representative is required to mail the copy within 3 days of the receipt of the request being received. Non-compliance with this rule may result in dismissal of the application.

(2) Representatives of applicants and potential protestants are urged to communicate by telephone if problems occur in the furnishing of the application. Requests for extensions of time where no attempt has been made to correct matters informally are looked upon with disfavor.

(n) *Opposed applications.* If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

(o) *Filing a reply statement.* (1) If the application is oppcsed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the FEDERAL REGISTER publication.

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal argument by counsel need not be notarized or verified.

(p) *After all statements are submitted.* (1) When the proceeding is to be handled under the modified proce-

dure, the next notification to the parties will be the service of the initial decision.

(2) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

(q) *Applicant withdrawal.* If applicant wishes to withdraw an application, it shall request dismissal in writing.

(r) *Caption summary.* The caption summary, which shall accompany all applications, shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries, or examples may be found in the daily FEDERAL REGISTER.

(s) *Compliance.* Prior to beginning operations under a certificate, permit, or license, compliance must be made with the following statutory and regulatory requirements for obtaining insurance or bonding, filing tariffs or schedules, and designating agents to receive service of process.

(1) For Motor Common Carriers of Property: 49 CFR 1043, 1044, and 1310

(2) For Motor Contract Carriers of Property: 49 CFR 1043, 1044, and 1307

(3) For Motor Common and Contract Carriers of Passengers: 49 CFR 1043, 1044, and 1306

(4) For Brokers of Motor Vehicle Transportation: 49 CFR 1043, and 1044

(5) For Water Carriers: 49 CFR 1308; 49 U.S.C. 10329

(6) For Freight Forwarders: 49 CFR 1084, and 1309; 49 U.S.C. 10329

(t) *Appeals to rejections of the application.* (1) Where a review board or other decisional body rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(2) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

(u) *Tacking or joinder of authority.* (1) An applicant for irregular-route motor common carrier authority which holds regular-route motor carrier authority shall indicate this in its caption summary. The caption summary shall indicate the sub-numbers of this regular-route authority. The purpose of this requirement is to inform the public that direct operations are able to be performed after combining the irregular-and-regular route authorities.

(v) *Freight forwarder applicants only.* An applicant for freight forwarder authority shall submit the following additional information: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If *yes,* applicant shall describe such persons and advise to what extent such persons use the services of freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling, consolidating, and shipping in connection with the transportation of such articles or commodities.

(w) *Water carrier applicants only.* (1) If an exemption is being claimed, applicant shall describe the operations proposed to be exempted and in each instance refer to the statutory provisions under which the exemption is claimed.

(2) If an applicant for exemption under 49 U.S.C. 10544(f) is engaged solely in transporting the property of the parent company, it shall list persons owning all or substantially all of the voting stock of the applicant.

(3) If applicant seeks approval of dual operations under 49 U.S.C. 10930, it shall specify those that would result from a grant of the application.

(4) An applicant for exemption under 49 U.S.C. 10544(e) shall furnish a copy of the charter, lease, or other agreement under which it proposes to operate.

(5) If applicant is a water common carrier seeking a revised certificate covering extension of service pursuant to 49 U.S.C. 10922(e)(3)(B), the following shall be furnished: (i) Describe the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation; (ii) Describe operations performed thus far on uncompleted portion of waterway

newly opened for navigation, including date service was extended and points served; see 49 CFR 1140.2; (iii) Describe operations performed under present certificate authorizing service on previously completed portion of waterway, naming points served, indicating when service commenced, and if operation has not been continuous.

[45 FR 86789, Dec. 31, 1980, as amended at 46 FR 44191, Sept. 3, 1981]

§ 1100.252 How to oppose requests for authority.

(a) *Definitions.* A person wishing to oppose a request for permanent authority files a *protest.* A person filing a valid protest becomes a *protestant.*

(b) *Time for filing.* A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the FEDERAL REGISTER. A copy of the protest shall be sent to applicant's representative at the same time. Failure to timely file a protest waives further participation in the proceeding.

(c) *Contents of the protest.* (1) All information upon which the protestant plans to rely is put into the protest.

(2) A protest must be verified, as follows:

I, ———, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

———(Signature and date).

(3) A protest not in substantial compliance with these rules may be rejected.

(4) A protestant files two separate types of evidence. The first is its qualifications evidence, see paragraph (d) of this section. All protestants shall submit qualifications evidence under the format in paragraph (d) of this section. Protestants shall also file factual evidence, according to the guidelines in paragraph (e) or (f) of this section.

(d) *Qualifications format.* This information shall be submitted in separately numbered paragraphs:

(1) Docket number of application being opposed.

(2) Name and domicile of protestant, including lead docket number, if any.

(3) Name and address of protestant's representative.

(4) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(5) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited service within the scope of the application during that period, *or*

(6) Description of any application which the prospective protestant has pending before the Commission which was filed before applicant's application and which is substantially for the same traffic, *or*

(7) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. A person seeking to qualify under this paragraph shall describe in detail the circumstances which warrant its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall normally permit such person to intervene when it shows that a proceeding is novel or of first impression, is of industry wide importance, or has significant economic impact.

NOTE: A motor contract carrier of property may not protest an application to provide transportation as a motor common carrier of property.

(e) *Factual evidence format* [except fitness only applications]. (1) A summary, description or copy of the *specific* authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(2) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(3) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(4) Adverse impacts on its business generally and on the public, such as: (a) Need to close terminals or other facilities, (b) number of employees that would be furloughed or dismissed, (c) resulting imbalance or inefficiencies caused to its operations, (d) effects on fuel efficiency, or (e) inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(5) Evidence that applicant is not fit, willing or able to comply with the appropriate statutes or regulations governing its activities.

(6) Legal or other argument (optional).

(7) Verification.

(8) Certificate of service.

(9) Any request for oral hearing.

(f) *Factual evidence format for fitness only applications: Scope.* The types of applications listed in § 1100.251(b) may be protested on the grounds listed here. Factual evidence in opposition shall consist of the following, where applicable:

(1) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(2) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

NOTE: If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(3) Legal argument (optional).

(4) Verification.

(5) Certificate of service.

(6) Any request for oral hearing.

(g) *Requests for oral hearing by a protestant.* It is the policy of the Commission to handle application proceedings under § 1100.251 using the modified procedure if at all possible. See § 1100.253(i). Protestants shall file any request at the end of their protest.

(h) *To whom the protest is sent.* (1) An original and one copy of the protest shall be sent to the Office of the Secretary, I.C.C., Washington, D.C. 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(2) Concurrently with the filing in paragraph (h)(1) of this section, a copy shall be sent to applicant's representative.

(i) *Obtaining a copy of the application.* (1) A copy of the application is available for inspection at the Commission's offices in Washington, D.C., or the regional office of applicant's domicile. In addition, applicant is required to send a copy to interested persons upon payment of a $10.00 charge. See § 1100.251(m).

(j) *Withdrawal.* A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicant in writing.

[45 FR 86792, Dec. 31, 1980]

§ 1100.253 General rules governing the application process.

(a) *Contacting another party.* When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the FEDERAL REGISTER.

(b) *Serving copies of pleadings, letters; the certificate of service.* (1) When the rules require service of a pleading or letter on another party, that material shall be mailed or delivered by hand to the party concurrently with its service on the Commission. See, in addition, 49 CFR 1100.20.

(2) All pleadings other than the application shall contain a statement (certificate of service) that the pleading has been served in accordance with paragraph (b)(1) of this section.

(3) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(4) A protestant need serve only the Commission and applicant with pleadings or letters.

(5) All pleadings or letters, unless otherwise specified, shall be sent to the Office of the Secretary.

(c) *Copies.* All material forwarded to the Commission in Washington, D.C., except for telegraphic material, shall consist of an original and one copy.

(d) *Requests for extension of time.* (1) Requests for extensions of time are granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(2) No extensions will be granted for more than 3 working days.

(3) Requests shall be made in documentary form (letter or telegraph) addressed to the Section of Operating Rights, with a notice of the request sent to known parties. The Commission will notify the requesting party as soon as possible of the decision. The requesting party shall immediately notify all known parties of the action taken on the request.

(4) If the time for filing a protest is extended, the time for submitting applicant's reply is automatically extended.

(5) Oral communications with Commission personnel pertaining to the merits of an extension request are a violation of the Commission's Code of Ethics for Practitioners.

(e) *Petitions to clarify or interpret formally an operating authority.* (1) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(2) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee of $200. The petition shall be sent to the Office of the Secretary.

(3) Notice of the petition will be published in the FEDERAL REGISTER. Interested persons may obtain copies of the petition from petitioner's representative in the same manner as provided in § 1100.251(m). Petitioner may file a reply to any opposing argument.

(f) *Replies to motions.* Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

(g) *Consolidation of applications.* (1) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Section of Operating Rights.

(2) Requests to consolidate applications not concurrently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(3) Representatives of the consolidating applicants shall indicate their agreement with the consolidation either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(4) The applications will be published in the FEDERAL REGISTER and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

(h) *Marking contents on envelopes, and submission of pleadings.* (1) Send all documents to Office of the Secretary, ICC, Washington, D.C. 20423, unless the rules specify otherwise.

(2) The Commission requests that persons participating in proceedings under these rules mark the lower left hand corner of the envelope with the docket number, where known (not the full title), and the pleading type. To assist the Commission further, use these designations where appropriate:

APPLICATION
PROTEST
REPLY TO PROTEST
EXTENSION OF TIME REQUEST
MOTION
REPLY TO MOTION
APPEAL
REPLY TO APPEAL
DISMISSAL BY APPLICANT
PROTESTANT WITHDRAWAL
PETITION TO CLARIFY

(i) *Requesting oral hearing.* (1) If a protestant (or applicant) believes that a proceeding should be orally heard the person may request an oral hearing. It is the policy of the Commission to handle application proceedings under § 1100.251 using the modified procedure if at all possible.

(2) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(3) The Commission intends to assign matters for oral hearing only where use of modified procedure would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(4) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

[45 FR 86793, Dec. 31, 1980]

Appendix A—Code of Ethics for Practitioners Before the Interstate Commerce Commission

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Preamble

No rules of conduct can be framed which will particularize all the duties of the practitioner in the varying phases of litigation or in his relations to clients, adversaries, other practitioners, the Commission and the public. The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission.

It will be remembered that the practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law and (b) others having traffic or other techical experience qualifying them to aid the Commission in administration of the Interstate Commerce Act and related acts of Congress. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer; for the latter, no code of ethics has been written heretofore. The following canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply alike to all practitioners before the Commission and the setting forth therein of particular duties or principles of conduct should not be construed as a denial of the existence of others equally imperative although not specifically mentioned. The word "Commission" as used herein includes Divisions of the Commission

and the representatives of the Commission, whether members, examiners, or other employees connected with the matter in hand.

CANONS OF ETHICS

1. *Standards of ethical conduct in courts of the United States to be observed.* These canons are in furtherance of the purpose of the Commission's rules of practice which enjoin upon all persons appearing in proceedings before it to conform, as nearly as may be, to the standards of ethical conduct required of practitioners before the courts of the United States; and such standards are taken as the basis for these specifications, modified insofar as the nature of the practice before the Commission requires.

2. *The duty of the practitioner to and his attitude toward the Commission.* It is the duty of the practitioner to maintain toward the Commission a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and strive to uphold its honor and dignity. The Commission, not being wholly free to defend itself, is peculiarly entitled to receive the support of the practitioner against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or employee of the Commission it is the right and duty of the practitioner to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

3. *Punctuality and expedition.* It is the duty of the practitioner not only to his client, but to the Commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

4. *Attempts to exert political influence on the Commission.* It is unethical for a practitioner to attempt to sway the judgment of the Commission by propaganda, or by enlisting the influence or intercession of members of the Congress or other public officers, or by threats of political or personal reprisal.

5. *Attempts to exert personal influence on the Commission.* Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, examiner, or other representative of the Commission, uncalled for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between Commission and practitioners.

6. *The selection of Commissioners.* The nomination of commissioners is a duty of the President, and confirmation, of the Senate. It is the duty of the practitioners insofar as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from outweighing fitness in the selection.

7. *The practitioner's duty in its last analysis.* No client, corporate or individual, however powerful, no cause, civil or political however important, is entitled to receive, and no practitioner should render, any service or advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such improper service or advice the practitioner invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although until a statute shall have been construed and interpreted by competent adjudication, he is free and entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

8. *Private communications with the Commission.* In the disposition of contested proceedings brought under the Interstate Commerce Act the Commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capacity. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a Commissioner, examiner, or other representative of the Commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. Practitioners at all times should scrupulously refrain in their communications to and discussions with the Commission and its staff from going beyond ex parte representations that are clearly proper in view of the administrative work of the Commission.

9. *Adverse influences and conflicting interests.* It is the duty of a practitioner at the

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time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a practitioner represents conflicting interests when in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

10. *Joint association of practitioners and conflicts of opinion.* A client's proffer of the assistance of an additional practitioner should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A practitioner should decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

When practitioners jointly associated in a cause cannot agree as to any matter vital to the interest of the client the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgement has been overruled to cooperate effectively. In the event it is his duty to ask the client to relieve him.

It is the right of any practitioner, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful practitioner, generally after communication with the practitioner of whom the complaint is made.

11. *Withdrawal from employment.* The right of a practitioner to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The practitioner representing him should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect. If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the practitioner's remonstrance in presenting frivolous defenses, or if he deliverately disregards an agreement or obligation as to fees or expenses, the practitioner may be warranted in withdrawing on due notice to the client allowing him time to employ another. So also when a practitioner discovers that his client has no case and the client is determined to continue it; or even if he finds himself incapable of conducting the case effectively. Sundry other instances may arise in which withdrawal is to be justified. Upon withdrawing from a case after a retainer has been paid, he should refund such part of the retainer as has not been clearly earned.

12. *Advising upon the merits of a client's cause.* A practitioner should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result or pending or contemplated litigation. He should beware of bold and confident assurance to clients, especially where employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

13. *Negotiations with opposing party.* A practitioner should not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the practitioner who represents the other party. It is incumbent upon the practitioner most particulary to avoid everything that may tend to mislead a party not represented by a practitioner, and he should not undertake to advise him as to the law.

14. *Fixing the amount of the fee.* In fixing fees, practitioners should avoid charges which overestimate their advice and services. A client's ability to pay cannot jusitify a charge in excess of the value of the service, although his or her poverty may require a less charge, or even none at all. It is misleading to quote a fee for a specific service in either a public communication or solicitation for employment without adhering to it in charging clients. Practitioners are bound to charge no more than the quoted rates for 30 days following the date of their quotations unless a different period of time for the effectivenss of such rates is clearly specified when quoted, or permission to charge a higher rate is obtained from the Vice Chairman of the Commission.

15. *Compensation, commission and rebates.* A practitioner should accept no compensation, commissions, rebates or other advantages from the parties to the proceeding other than his client without the knowledge and consent of his client after full disclosure.

16. *Contingent fees.* Contingent fees should be such only as are sanctioned by law. In no case, except a charity case, should they be entirely contingent upon success.

17. *Division of fees.* No division of fees for services is proper, except with a member of the bar of with another practitioner, based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and reward them by a division of fees, and such a practice cannot be too severly condemned.

18. *Suing clients for fees.* Controversies with clients concerning compensation are to be avoided insofar as compatible with self-respect and with the right to receive reasonable recompense for services; and lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

19. *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of the litigation which he is conducting.

20. *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but subject to reimbursement by the client.

21. *Witnesses.* A practitioner shall not undertake that the compensation of a witness shall be contingent upon the success of the cause in which he is called. If the ascertainment of truth requires that a practitioner should seek information from one connected with or reputed to be biased in favor of an adverse party, he is not thereby deterred from seeking to ascertain the truth from such person in the interest of his client.

22. *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be used by him.

23. *How far a practitioner may go in supporting a client's cause.* Nothing will operate more certainly to create or foster popular prejudice against practitioners as a class, and deprive them of that full measure of public esteem and confidence which belongs to the proper discharge of their duties than does the false claim, often set up by the unscrupulous in defense of questionable transaction, that it is the duty of the practitioner to do whatever may enable him to succeed in winning his client's cause.

The practitioner owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by rules of law, legally applied. No fear of the disfavor of the Commission or public unpopularity should refrain him from full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his counsel to assert every such remedy or defense. But it is to be steadfastly borne in mind that this great trust is to be performed within and not without the bounds of the law. Admission to the privilege of appearing before the Commission as representing another does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

24. *Restraining clients from improprieties.* A practitioner should use his best efforts to restrain and to prevent his clients from doing those things which he himself ought not to do, particularly with reference to their conduct towards the Commission, other practitioners, witnesses and suitors. If a client persists in such wrong-doing, the practitioner should terminate their relations.

25. *Ill-feeling and personalities between advocates.* Clients, not their representatives, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence practitioners in their conduct and demeanor toward each other or toward suitors in the case. All personalities between practitioners should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of practitioners on the other side. Personal colloquies between practitioners which cause delay and promote unseemly wrangling should also be carefully avoided. Their statements should be addressed to the Commission.

26. *Treatment of witnesses and litigants.* A practitioner should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the practitioner's conscience in such matters. He has no right to demand that the practitioner representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking on his own behalf.

27. (*None.*)

28. *Discussion of pending litigation in public press.* Attempts to influence the action and attitude of the members and examiners of the Commission through propaganda or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the Commission that the facts of pending litigation shall be made known to the public through the press in a fair and

unbiased manner and in dispassionate terms. Practitioners should themselves avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the Commission, or to influence the Commission's course and judgment as to pending or anticipated litigation. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

29. *Candor and fairness.* The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The nontechnical character and liberality of the Commission's practice call for scrupulous observance of the principles of fair dealing and just consideration for the rights of others.

It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A practitioner should not offer evidence, which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He should not introduce into an argument remarks or statements intended to influence the bystanders.

These and all kindred practices are unethical and unworthy of a practitioner.

30. *Right of practitioner to control the incidents of the trial.* As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposing practitioner to trail when he is under affliction or bereavement, forcing the trail on a particular day to the injury of the opposing practitioner when no harm will result from trial at a different time, agreeing to extensions of time and the like, the practitioner and not the client, must be allowed to judge. In such matters no client has a right to demand that his practitioner shall be illiberal or do anything therein repugnant to the practitioner's sense of honor and propriety.

31. *Taking technical advantage of opposing practitioner; agreements with him.* A practitioner should not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner. Insofar as possible, important agreements affecting the rights of the clients should be reduced to writing; but it is dishonorable to avoid performance of an agreement faily made because it is not reduced to writing.

32. *Public communication and solicitation.* A practitioner shall not in any way use or participate in the use of any form of public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. Such prohibition includes, but is not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements that are not objectively verifiable; statements of fee information which are not complete and accurate; statements containing information on past performance or prediction of future success; statements of prior Commission employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner; statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format. A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he or she does not want to receive communications from the practitioner, nor shall a practitioner make a solicitation which involves the use of undue influence. A practitioner shall not solicit a potential client who is apparently in a physicial or mental condition which would make it unlikely that he or she could exercise reasonable, considered judgement as to the selection of a practitioner. A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner. If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission. A paid advertisement must be identified as such unless it is apparent from the context that it is a paid adver-

tisement. A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

33. (None).

34. (None).

35. *Justifiable and unjustifiable litigation.* The practitioner must decline to conduct a cause or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. But otherwise, it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the Commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

36. *Responsibility for litigation.* No practitioner is obliged to act either as adviser or advocate for every person who may seek to become his client. He has the right to decline employment. Every practitioner upon his own responsibility must decide what employment he will accept, what causes he will bring before the Commission for complainants, or contest for defendants or respondents. The responsibility for advising as to questionable transactions, for bringing questionable proceedings, for urging questionable defenses is his alone. He cannot excape it by urging as excuses that he is only following his client's instructions or that he is under a stated retainer or in the regular employment of his client.

37. *Discovery of imposition and deception.* When a practitioner discovers that some fraud or deception has been practiced, which has unjustly imposed upon the Commission or a party, he should endeavor to rectify it; first by advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his counsel (practitioner) so that appropriate steps may be taken.

38. *Upholding the honor of the calling.* Practitioners should expose without fear or favor before the proper tribunals corrupt or dishonest conduct and should accept without hesitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a cause in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities. The practitioner should aid in guarding the bar of the Commission against admission thereto of candidates unfit or unqualified because deficient in either moral character or education. A practitioner should propose no person for admission to practice before the Commission unless from personal knowledge or upon reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in the Commission's rules of practice. He should strive at all times to uphold the honor and maintain the dignity of his calling and to improve not only the law but the administration of justice.

39. *Intermediaries.* The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. His responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties in the interest of such intermediaries. His relation to the client should be personal, and the responsibility should be direct to the client.

He may accept employment from any organization such as an association, club or trade organization, authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and untrammeled performance of his duties to the Commission.

Nothing in this canon shall be construed as conflicting with canon 17.

40. *Retirement from public employment.* A practitioner, having once held public office or having been in the public employ, should not after his retirement, accept employment as an advocate or adviser in the same proceeding or as to the same, or substantially the same, facts as were involved in any specific question which he investigated or passed upon in a judicial or quasi-judicial capacity while in such office or employ, whether the same or different parties are concerned.

41. *Confidences of a client.* The duty to preserve his client's confidences in the course of his employments outlasts the practitioner's employment, and extends as well to his employees. None of them should accept employment which involves the disclosure or use of these confidences, either for the private advantage of the practitioner or his employees or to the disadvantage of the client, without knowledge and consent of the client even though there are other available sources of such information. A practitioner should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included within the

confidences which a practitioner is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened.

42. *Partnership names.* Partnerships among practitioners for the practice of their calling are very common and are not to be condemned. The rules of the Commission provide that corporations of firms will not be recognized. Practitioners before the Commission should therefore appear individually and not as members of partnerships. In the formation of partnerships care should be taken not to violate any law locally applicable; care should also be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not locally admitted, or who is not duly authorized to practice, and as such amendable to discipline. No person should be held out as a practitioner or member who is not so admitted. No practitioner who is not admitted to practices in the courts should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership. The continued use of the name of a deceased or former partner is or may be permissible by local custom, but care should be taken that no imposition or deception is practiced through this use. If a member of the firm becomes a Commissioner, or an Examiner or other employee of the Commission his name should not be retained in the firm name, as such retention may give color to the impression that an improper relation or influence is continued or possessed by the firm.

This canon does not inhibit the association of a practitioner with a mercantile, manufacturing, or other commercial institution, in the capacity of its representative or adviser.

43. *Titles.* No member of the Association not admitted to the bar shall use the title "Attorney" or "Counsel" but should use the title "Traffic Manager", "Practitioner before the Interstate Commerce Commission", "Registered Practitioner", or other appropriate title or designation.

(49 U.S.C. 10308, 10321)

[42 FR 23806, May 11, 1977, as amended at 44 FR 17505, Mar. 22, 1979]

Appendix B—Approved Forms

TABLE OF CONTENTS

1. Complaint; verification.
2. Answer.
3. Certificate of service.
4. Petition for leave to intervene.
5. Form of reparation statement under Rule 95.
6. Verification or statements of fact filed under modified procedure.
7. Approved Form No. 7 under Rule 245.

[These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary. Before using such forms the pertinent rules, particularly those referred to in the footnotes, should carefully be studied.]

NO. 1 COMPLAINT[1]

Before the the Interstate Commerce Commission

COMPLAINT

———————————————

v.

———————————————

[Insert without abbreviation the names of the complainant and defendant (Including each of the receivers, operating trustees, or other legal representatives of defendant), and whether a corporation, firm or partnership, specifying the individual name of the parties composing the partnership; and the post office address of any motor carrier defendant.]

The Complaint of the above-named complainant respectfully shows:

I. That [complainant should here state nature and place of business, also whether a corporation, firm, or partnership and if a firm or partnership, the individual names of the parties composing same.]

II. That the defendant above-named is [here state whether: (a) Carrier by railroad, express, motor vehicle (common or contract), water (common or contract), a freight forwarder, or otherwise; (b) the transportation is of property or passengers, or both; and (c) the transportation involves a freight forwarder or more than one type of carrier (specifying particulars) between points in the State of ———————— and points in the State of ———————— [a complaint under part II should specifically name the States in and through which the transportation which gives rise to the complaint is performed] and as such defendant is subject to the provisions of the Interstate Commerce Act.

III. That [state in this and subsequent paragraph to be numbered IV, V, etc., the matter or matters intended to be complained of, naming every rate, fare, charge, classification, regulation, or practice the lawfulness of which is challenged, and also, if practicable, the points between which the rates, etc., complained of are applied. Where

[1] See Rules 24 to 31, inclusive.

it is impracticable to designate each point, describe clearly the rate territory or rate group involved. Whenever practicable tariff or schedule reference should give be given.]

[Where unlawful discrimination, preference, or prejudice is alleged the particular elements specified in the act as constituting such violation (see sections 2, 3, 4, 13, 216, 217, 218, 305, and 406) and the facts upon which complainant relies to establish the violation should be stated clearly. Where any provision of the act other that those just mentioned, or any requirement established pursuant to the act, is alleged to be violated, the pertinent statutory provision, or established requirement, together with the facts which are alleged to constitute the violation, should be stated. If two or more subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one subsection, or requirement, should be stated separately from those claimed to constitute a violation of another subsection, or requirement, wherever that can be done by reference or otherwise without undue repetition.]

X. That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates [ares or charges, etc.] for transportation which were when exacted and still are (1) unjust and unreasonable in violation of section ———, of the Interstate Commerce Act, and (2) unjustly discriminatory in violation of section ———, and (3) unduly preferential or prejudicial in violation of section ———, and (4) in violation of the long-and-short haul [or aggregate of intermediate rates] provision of section 4 thereof. [Use one or more of the allegations numbered (1), (2), (3), (4), or other appropriate allegation according to the nature of the complaint.] That [if recovery of damages is sought] complainant has been injured therby to his damage in the sum of $———.

Wherefore complainant prays that defendant be required to answer to charges herein; that after due hearing and investigation an order be made commanding said defendant [and each of them] to cease and desist from the aforesaid violations of said act, and establish and put in force and apply in future to the transportation of ———— between the origin and destination points named in paragraph ——— hereof, in lieu of the rates [fares or charges, etc.], named in said paragraph, such other rates [fares or charges, etc.], as the Commission may deem reasonable and just [and also, if recovery of damages is sought, pay to complainant by way of reparation for the unlawful charges hereinbefore alleged the sum of $———, or such other sum, as in view of the evidence to be adduced herein, the Commission shall determine that complainant is entitled to an award of damages under the provisions of said act for violation thereof], and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at ————————, 19——.

————————————————
(Complainant's signature) [2]

————————————————
(Office and post-office address)

————————————————
(Signature of practitioner)

————————————————
(Post-office address)

VERIFICATION[3]

State of ————————————
County of ————————————

————————————, being duly sworn, deposes and says: that he is the complainant (or, one of the complainants); or, is the (insert title of the affiant if complainant is a corporation) of the ———— company, complainant) in the above-entitled proceeding; that he has read the foregoing complaint, and knows the contents thereof; that the same are true as stated, except as to matters and things if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

————————————————

Subscribed in my presence, and sworn to before me, by the affiant above named, this —— day of ————————, 19——.

[Use an L.S. impression seal]

————————————————
[Title of officer]

Commission expires ————————————

NO. 2 ANSWERS [4]

Before the Interstate Commerce Commission

Answer

Docket No. ————

————————————————
v.

————————————————

The above-named defendant, for answer to the complaint in this proceeding, respectively states:

[2] See footnote for verification.

[3] Signature and verification by complainant unnecessary if complaint is signed by a practitioner. See Rule 15.

[4] See Rules 3 to 35, inclusive.

I. [Here set forth appropriate and responsive admissions, denials, and averments, specifically answering the complaint paragraph by paragraph.]

Wherefore defendant prays that ———— Dated ————————, 19——.

————————————————
(Name of defendant)

By [5]

————————————————

————————————————
(Title of Officer)

————————————————
(Office and post-office address)

————————————————
(Signature of Practitioner)

————————————————
(Post/office Address)

NO. 3 CERTIFICATE OF SERVICE [6]

I certify that I have this day served the foregoing document upon all parties of record in this proceeding, by (here state the precise manner of making service, which must be consistent with Rule 20).

Dated at ————————, this —— day of ————————, 19——.

————————————————
(Signature)

NO. 4 PETITION FOR LEAVE TO INTERVENE BEFORE THE INTERSTATE COMMERCE COMMISSION [7]

Petition

————————————————

V.

————————————————

(Or state other title)

Docket No. ————

Comes now your petitioner, ———— ————————, and respectfully represents that he has an interest in the matter in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That [petitioner should here state nature and place of business, and whether as corporation, firm, or partnership, etc. as in form No. 1.]

II. [Petitioner should here set out specifically his position and interest in the proceeding.]

III. [If affirmative relief is sought see paragraphs III and X and prayer in form No. 1.]

Wherefore said ———————— prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral arguments if oral argument is granted.

[If affirmative relief is sought insert appropriate prayer here.]

Dated at ————————, 19——.

[See forms No. 1 and 3 as to subscription, verification and certificate of service.]

NO. 5 FORM OF REPARATION STATEMENT UNDER RULE 95

Claim of ———— under decision of the Interstate Commerce Commission in Docket No. ————

———— Date of shipment.
———— Date of delivery or tender of delivery.
———— Date charges were paid.
———— Car [8] initials.
———— Car [9] number.
———— Origin.
———— Destination.
———— Route.
———— Commodity.
———— Weight.
———— Rate.
———— Amount.
———— Rate.
———— Amount.
———— Reparation on basis of Commission's decision.
———— Charges paid by.[10]

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here

[5] See Rule 15.
[6] See Rule 20.
[7] See Rule 71.

[8] Substitute "Vessel" if water carrier involved.
[9] Substitute "Voyage No." if water carrier involved.
[10] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

indicate any exceptions, and explanation thereof).

———————
(Claimant)
By ———————
(Practitioner)

———————
(Address)

———————
(Date)

Total amount of reparation $———. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ——— Concurred [11] in: ——— Company ——— Company, Defendant Collecting Carrier, Defendant.[12] ———
By ———, Auditor. By ———, Auditor.

NO. 6 VERIFICATION FOR STATEMENT OF FACT FILED UNDER MODIFIED PROCEDURE [13]

State of ———,
County of ———,
ss:

——— being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

(Signed) ———

Subscribed and sworn to before me this ——— day of ———. ———
Notary Public of ———.
My Commission expires ———.

NO. 7 NOTICE OF FILING OF APPLICATION FOR PUBLICATION IN FEDERAL REGISTER UNDER SECTION 206 (a) (6) OF THE INTERSTATE COMMERCE ACT, AS AMENDED

(See instructions)

Part I

(To be completed by applicant)

Notice is hereby given that the below named applicant has filed with ———

———————
(Name of State Commission)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1.———
(Name and business address of applicant)

———————

———————
(Street) (City) (State)

2.———
(Name and address of applicant's representative, if any)

———————

———————
(Street) (City) (State)

3. Describe below in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce. (If additional space is necessary, use reverse side.)

———————
(Signature)

———————
(Title)

Date ——— 19——.

Part II

(To be completed by State Commission)

Date of filing application ———
Docket number assigned ———
Date and time and place application has been assigned for hearing, if known ———

———————

———————
(Signature)

———————
(Title)

———————
(Name of State Commission)

Date this notice forwarded to Interstate Commerce Commission, Washington, D.C. 20423, ———, 19——.

Instructions

This form is for use in giving notice to interested persons regarding the filing of intrastate motor carrier applications in connection with which the applicant also desires authority to engage in interstate and foreign commerce pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, by Pub. L. 87-

[11] For concurring certificate in case collecting carrier is not a defendant.
[12] If not a defendant, strike out the word "defendant."
[13] See Rule 48.

805. It should be filed in duplicate (along with the intrastate application) with the State Commission, which will forward it to the Interstate Commerce Commission, Washington, D.C. 20423.

The description in Part I, item 3 should include the commodities (or passengers) sought to be transported, the points to be served, and the routes over which, or territories within which, such transportation is to be performed. Care should be taken to insure that the description, which will be published in the FEDERAL REGISTER, fully informs interested persons of the type and scope of the proposed intrastate operations, and the extent to which applicant desires authority to engage in transportation in interstate and foreign commerce in connection with such intrastate operations.

[42 FR 40699, Aug. 11, 1977]

APPENDIX C—EX PARTE COMMUNICATIONS

1. *Ex parte communications.* (a) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any ex parte communication concerning the merits of the proceeding to any member of the Commission hearing officer, member of a joint board, or to any employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding.

(b) No member of the Commission, hearing officer, member of a joint board, or employee of the Commission participating or who may reasonably by expected to participate in the decision in such proceeding shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.

2. The prohibitions of paragraph 1 apply from the time and on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure, at such time as the person responsible for the communication has knowledge that the proceeding will be so noticed, or from such earlier time as the Commission may fix by rule or order in the particular case.

3. For the purposes hereof: (a) "On-the-record proceeding" means a proceeding described in Section 556-557 of the Administrative Procedure Act (5 U.S.C. 556-557) or a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.

(b) "Person who intercedes in any proceeding" means any individual outside the Commission (whether public or private life), partnership, corporation, or association, other than a party or an agent of a party, who volunteers a communication which he may be expected to know may advance or adversely affect the interest of a particular party or any party's agent.

(c) "Ex parte communication concerning the merits" includes both oral and written communications, but the following classes of ex parte communication shall not be prohibited;

(1) Any oral or written communication which all the parties to the proceeding agree, or which the Commission, the hearing officer, or joint board formally rules, may be made on an ex parte basis.

(2) Any oral or written communication of facts or contentions which have general significance for an industry subject to regulation if the communicator cannot reasonably be expected to know that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which he is interested.

(3) Any communication by means of any new medium which in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publications with respect to pending on-the-record proceedings.

(d) "Any employee of the Commission participating in the decision" includes personal assistants to members of an employee review board appointed pursuant to Public Law 87-247 (1961) to whom the proceeding may be referred for decision, employees of the Commission's Office of Proceedings, employees of the Rail Services Planning Office, and the staff of the General Counsel's Office.

4. Any member of the Commission, hearing officer, member of a joint board, or employee of the Commission, participating or who reasonably may be expected to participate in the decision, who personally receives a written communication which he believes is prohibited at the time received, shall promptly transmit the written communication, or a written summary of the substance of an oral communication, together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself, to the Secretary of the Commission, who shall place any material so received in the correspondence section of the public docket of the proceeding. Any such person who receives a communication and who is not certain whether such communication is a prohibited ex parte communication may request, and shall be given promptly, a ruling on the question from the Commis-

sion's General Counsel. The Chairman of the Commission shall be notified promptly of all reports of ex parte communications, or requests for rulings on possible ex parte communications, transmitted to the Secretary or the General Counsel. He may require that any such communication be placed in the correspondence section of the docket if he concludes that the dictates of fairness require that it be made public, even if it is not prohibited communication, and he may direct the taking of such other or further action as may be appropriate under all the circumstances.

5. The Commission may censure, or suspend or revoke the privilege to practice before the agency, of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

6. To the extent permitted by law, the relief or benefit sought by a party to a proceeding may be denied if the party, or an agent of the party, knowingly and willfully violates the foregoing prohibitions or requirements.

7. The Commission may censure, suspend, or dismiss, or institute proceedings for the suspension or dismissal of any Commission employee who knowingly and willfully violates the foregoing prohibitions or requirements.

[42 FR 23806, May 11, 1977, as amended at 42 FR 34884, July 7, 1977]

Appendix D—Attorneys-Qualification

I, _____
(Name)

_____
(Address) (Telephone No.)

hereby declare that I am an attorney at law qualified as a member in good standing of the bar of the highest court of the

_____
(Signature)

Appendix E—Index of the Special Rules Contained in Parts 1101-1159

Parts 1101-1109—Rules of Practice

Part
1101 Temporary operating authorities and approvals.
1102 Procedures governing rail carrier general increase proceedings.
1104 Procedures to be followed in motor carrier revenue proceedings.
1107 Requirements and procedures relating to Railroad Rate Adjustment Act of 1973.
1108 Revised Guidelines for Implementation of the National Environmental Policy Act of 1969.

Parts 1110-1119—Rail Carriers Consolidation, Finance, and Reorganization

1110 General requirements.
1111 Railroad and water carrier consolidation procedure.
1112 Interlocking officers.
1113 Guaranty of loans to carriers by railroad.
1114 Alteration or modification of securities and the provisions of instruments, and filing of certificates and reports.
1115 Issuance of securities, assumption of obligations, and filing of certificates and reports.
1116 Recordation of documents.
1117 Reorganization of railroads.
1118 Corporate reorganization of carriers and corporations.

Parts 1120-1129—Special Procedures; Rail Carriers Certificate of Public Convenience and Necessity

1120 Construction, extension, acquisition, or operation of railroad lines.
1121 Abandonment of railroad lines.
1122 Discontinuance or change of operation or service.
1123 Determination of avoidable losses.
1124 Regulations governing the adequacy of intercity railroad passenger service.
1125 Standards for determining rail service continuation subsidies.
1126 Submission of cost data to justify reimbursement for directed service.

Parts 1130-1139—Special Procedures; Motor Carriers and Brokers Certificates, Permits, Licenses

1130 Applications for motor carrier certificates and permits.
1131 Temporary authority applications under section 210a(a) of the Interstate Commerce Act.
1131a Temporary authority applications under section 311(a) of the Interstate Commerce Act
1132 Transfers of operating rights.
1133 Transfers of Passenger Brokers' licenses.
1134 Control or conslidation of motor carriers or other properties.
1135 Corporate reorganizations of motor carriers.

Parts 1140-1149—Special Procedures, Water Carriers

1140 Extensions of operations.

Part
1141 Transfers of certificates and permits to operate.

PARTS 1150-1159—SPECIAL PROCEDURES; FREIGHT FORWARDERS

Part
1150 Applications for permits.
1151 Transfers of operating rights (permits).

APPENDIX F—NUMBER OF COPIES OF DOCUMENTS (IN ADDITION TO ORIGINAL) TO BE FILED WITH THE COMMISSION

Type of document	Citation	Number of copies: original plus—
APPLICATIONS—FINANCE MATTERS		
Competitive bidding requirements—exemption	49 CFR 1115.25 (49 CFR 1110.7)	Three (3).
Interlocking officers—approval	49 CFR 1112.7	Six (6).
Rail line—abandonment	49 CFR 1121.4(a)	Six (6).
Rail line—construction, extension, acquisition or operation.	49 CFR 1121.2(b)	Nine (9).
Rail or ferry line—discontinuance or change of service:	49 CFR 1121.8	Eight (8) of notice.
If by notice		Seven (7) of statements.
If by petition		Seven (7).
Railcarriers—guaranty loans	49 CFR 1113.4(c)	Six (6).
Railroad consolidation	49 CFR 1111.4(b)	Five (5).
Railroad reorganization	49 CFR 1117.12(b)	Six (6).
Securities issuance, assumption of obligations.	49 CFR 1115.3(e) (49 CFR 1110.7)	Three (3).
Securities or instruments—alteration or modification.	49 CFR 1114.3(b)	Six (6), plus one (1) for Governor of each State in which applicant operates.
APPLICATIONS—OTHER		
4th section	Rule 200	Six (6); fourteen (14) if division 2 matter.
Released rates	Rule 225(e)	Six (6).
Special permission	do	Six (6).
Sec. 5a (forms OP-F—44 and OP-F-45)	49 CFR 1134.1(b) and 1134.50(b) (49 CFR 1003.1).	Three (3).
PLEADINGS AND OTHER DOCUMENTS		
Admissions, requests for	Rule 6(a)	One (1) (copy only).
Answers to requests for admissions		Do.
Administrative appeals, petitions for stay	Rules 97 and 98	Six (6).
General transportation importance—petitions.	do	Fourteen (14).
Employee board actions—petition for reconsideration.	Rule 225(e)	Six (6).
Suspension and 4th section matters—petition for reconsideration.	Rule 200(5)	Six (6); Fourteen (14) if division 2 matter
Investigation into discontinuance—order instituting or decision not to investigate—petition for reconsideration.	Rule 245(g), Rule 245(h)(3)	Six (6).
Bankruptcy proceedings, various pleadings	Rule 14	Six (6).
Complaints—formal	Rule 24(a)	Six (6), copies plus one (1) for each defendant to be served. If State-made rates involved one (1) additional copy for each State concerned.
Complaints—informal—not seeking damages	Rule 22(a)	One (1).
Complaints—informal—seeking damages	Rule 23(d)	One (1) for each defendant to be served.
Complaints—answers	Rule 33(c)	Six (6) copies.
Complaints—satisfaction	Rule 35	None.
Depositions	Rule 62	One (1) plus one (1) copy of exhibits.
Exhibits	Rule 82(c)	One (1) copy; plus one (1) copy for each counsel and each board member.
Interrogatories—written	Rule 60(a)	One (1) (copy only).
Interrogatories—answers to	Rule 60(a)	Do.

APPENDIX F—NUMBER OF COPIES OF DOCUMENTS (IN ADDITION TO ORIGINAL) TO BE FILED WITH THE COMMISSION—Continued

Type of document	Citation	Number of copies: original plus—
Intervention petitions	Rule 70(d)	Three (3).
Intervention petitions—at oral hearing	Rule 70	One (1) plus one (1) for each party represented. If granted, one (1) for Commission.
Modified procedure—verified statements—in general.	Rule 50	Six (6).
Modified procedure—verified statement—applications.	Rule 247(e)(3)	One (1).
Prepared statements—oral hearing	Rule 75	Copy for reporter, and one (1) for each counsel.
Protests—general	Rule 38(c)	Six (6).
Protests—motor carrier finance	Rule 240(c)(1)	One (1).
Protests—investigation and suspension proceedings.	Rule 40(d)	Six (6).
Protests—motor carrier, broker, water carrier, freight forwarder applications.	Rule 247(d)(1)	One (1).
Oral argument matters	Rule 93	None.
Replies to pleadings	Rule 21(c)	Same number as pleading replied to.
Subpena requests	Rule 54	None.
Time modification—requests for extension	Rule 19(b)	Do.
Transcript correction	Rule 88(b)	Two (2) for reporter.

(49 U.S.C. 10101, 10321, 10501, 10521, 10921, 11301-11303, and 11341)

[42 FR 23806, May 11, 1977, as amended at 44 FR 17679, Mar. 23, 1979; 46 FR 48216, Oct. 1, 1981]

APPENDIX G—COMMISSION HEARING AND APPELLATE PROCEDURE

Sec. 303. (a) Section 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended by redesignating paragraphs (9) through (12) thereof as paragraphs (10) through (13) thereof, respectively, and by inserting therein the following new paragraph (9):

"(9) (a) Whenever the term hearing is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board or any other designated employee of the Commission.

"(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition to any such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

"(i) Complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

"(ii) With respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

"(A) Specific findings of fact;

"(B) Specific and separate conclusions of law;

"(C) A recommended order; and

"(D) Any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and

shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

"(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

"(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

"(e) The Commission may, in its discretion, extend any time period set forth in this section for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

"(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

"(i) Not less than 7 of the Commissioners, by public vote, agree to such further extension; and

"(ii) Not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

"(A) A full explanation of the reasons for such further extension;

"(B) The anticipated duration of such further extension;

"(C) The issues involved in the matter before the Commission; and

"(D) The names of personnel of the Commission working on such matter.

"(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

"(i) Reopen any proceeding;

"(ii) Grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

"(iii) Reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

"(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

"(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply to, any matter before the Commission which involves a common carrier by Railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the

provisions pertaining to deadlines contained in this paragraph.

"(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action, (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law."

(b) Section 17 of the Interstate Commerce Act is amended by inserting therein a new paragraph (14) as follows:

"(14) (a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after the date of enactment of this subdivision shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

"(b) Within 1 year after the date of enactment of this subdivision, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding."

PART 1101—TEMPORARY OPERATING AUTHORITIES AND APPROVALS

Sec.

1101.1 Extension of temporary operating authority or approval.
1101.2 Definitions and interpretations.
1101.3 Additional grant for new need.
1101.4 Termination of temporary authority or approval.

AUTHORITY: Sec. 17, 24 Stat. 546, as amended 49 Stat. 546, as amended, sec. 10, 52 Stat. 1238, as amended, secs. 304, 311, 54 Stat. 933; 49 U.S.C. 17, 304, 310a, 904, 911.

SOURCE: 32 FR 20090, Dec. 20, 1967, unless otherwise noted.

§ 1101.1 Extension of temporary operating authority or approval.

Pursuant to section 558 ot the Administrative Procedure Act (5 U.S.C. 558), when an applicant has made timely and sufficient application for a renewal of, or new, authority or approval in accordance with applicable Commission rules:

(a) Any temporary operating authority granted under 210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a), 911(a)) is continued in force, beyond the expiration date specified in such temporary operating authority, until the determination of an application filed by the holder of such temporary operating authority for a certificate of public convenience and necessity or a permit to engage in operations authorized by such temporary operating authority.

(b) Any temporary approval granted under section 210a(b) or 311(b) of the Interstate Commerce Act (49 U.S.C. 310a(b), 911(b)), is continued in force, beyond the expiration date specified in such temporary approval, until the determination of the related application for approval of a consolidation or merger of the properties of two or more motor or water carriers or of a purchase, lease, or contract to operate the properties of one or more such carriers.

[32 FR 20090, Dec. 20, 1967, as amended at 41 FR 50827, Nov. 18, 1976]

§ 1101.2 Definitions and interpretations.

A determination as to the applicability of § 1101.1 will be guided by the following interpretations of the provisions of the last sentence of section 558 of the Administrative Procedure Act (5 U.S.C. 558), and of the provisions of section 210a(a) of the Inter-

state Commerce Act (49 U.S.C. 310a(a));

(a) *Timely application.* An application for a certificate of public convenience and necessity or a permit filed in accordance with the applicable laws, regulations, and instructions, not later than 60 days after issuance of temporary authority for a period of 180 days or not later than 60 days after issuance of the first of a series of consecutive temporary authorities aggregating 180 days.

(b) *Sufficient application.* An application for a certificate of public convenience and necessity or a permit, which is in the form, contains the information, and is accompanied by the documents and exhibits required by the applicable laws, regulations, and instructions.

(c) *"Aggregate of 180 days."* The total number of days.

(d) *Series of grants.* As relates to extensions of temporary authorities under section 558 of the Administrative Procedure Act (5 U.S.C. 558), only those grants of temporary authority for less than 180 days which have been approved to meet a specific continuing need and which follow one after the other without interruption for a total of 180 days will be considered as a "series of consecutive temporary authorities aggregating 180 days".

(e) *Need considered not to be of a continuing nature.* Any need which is the basis of an operation authorized by a temporary authority or approval to be conducted for a period of less than an aggregate of 180 days is presumed not to be of a "continuing nature" unless the Commission otherwise expressly determines.

(f) *Final determination of application.* For the purpose of this section—

(1) An application for a certificate or permit shall be considered to be "finally determined" (i) with respect to operations for which the certificate or permit is denied, upon the expiration of the period allowed by the rules and regulations of the Commission or by the order (whichever is greater) within which petitions for rehearing, reargument, or reconsideration may be filed, or upon the denial of such petitions if filed, and (ii) with respect to operations for which the certificate or permit is granted, when the certificate or permit becomes effective.

(2) An application for approval of a consolidation or merger of the properties of two or more motor or water carriers, or of a purchase of the properties of one or more such carriers shall be considered to be "finally determined" (i) in the case of denial of such an application, upon the expiration of the period allowed by the rules and regulations of the Commission or by the order (whichever is greater) within which petitions for rehearing, reargument, or reconsideration may be filed, or upon the denial of such petitions if filed, and (ii) in the case of approval of such an application, when the certificate or permit to be transferred in connection with such application has been reissued in the name of the transferee and has become effective.

(3) An application for approval of a lease or contract to operate the properties of one or more motor or water carriers shall be considered to be "finally determined," (i) in the case of denial of such an application, upon the expiration of the period allowed by the rules and regulations of the Commission or by the order (whichever is greater) within which petitions for rehearing, reargument, or reconsideration may be filed, or upon the denial of such petitions if filed, and (ii) in the case of approval of such an application, when the order approving such application becomes effective.

[32 FR 20090, Dec. 20, 1967, as amended at 41 FR 50827, Nov. 18, 1976; 45 FR 64959, Oct. 1, 1980]

§ 1101.3 Additional grant for new need.

If the need for a particular service ceases and the temporary authority covering such need expires or is revoked and a new or separate need arises subsequent to such expiration or revocation, additional temporary authority for the 180-day aggregate, or for a shorter period, may be granted to the same carrier for the service notwithstanding the prior grant or grants. However, an application filed after the expiration or revocation of temporary authority for an aggregate of 180 days will be denied unless the facts clearly show that the application

is in reality based on a new need and not on a continuation of the need on which the prior grant of authority was based.

§ 1101.4 Termination of temporary authority or approval.

Nothing in this part shall be construed as preventing the Commission from terminating at any time, in accordance with law, any temporary authority or approval, or any extension thereof under section 558 of the Administrative Procedure Act (5 U.S.C. 558).

PART 1102—PROCEDURES GOVERNING RAIL CARRIER GENERAL INCREASE PROCEEDINGS

1102.1 Railroad cost recovery procedures.

(a) Rail carriers may adjust rates and charges quarterly in order to compensate for inflationary cost increases. The quarterly adjustment shall not for any rate exceed the percentage change in the Association of American Railroads' Index of Railroad Material Prices and Wage Rates as supplemented by the Producer Price Index for those costs not covered by the AAR Index. The Commission will make modifications or revisions to the index, as necessary. Until at least April 1, 1982, these procedures are available for collective adjustment of rates.

(b) The allowable increase will be based on a projection of the index to the midpoint of the quarter to which the index will apply. In order to avoid cumulative forecasting error, the percentage change must be calculated from a comparison of the forecast index for the midpoint of the quarter during which the rates will be in effect with the forecast index for the midpoint of the previous quarter.

(c) The AAR must file with the Commission no later than 20 days before the end of each quarter its calculation of the actual index as of the midpoint of the current quarter and the forecasted index for the midpoint of the next quarter.

(d) Tariffs containing adjustments under the provisions of this rule may be filed to become effective on not less than one day's notice.

(e) Increases in rates consistent with these standards will not be investigated or suspended by the Commission unless the filing results in a double recovery of inflation-based cost increases.

(49 U.S.C. 15(7), 17(3); 5 U.S.C. 553(b))

[46 FR 22099, Apr. 20, 1981; 46 FR 51255, Oct. 19, 1981]

PART 1103—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

Sec.

1103.1 Applicability.
1103.2 Opening of proceeding.
1103.3 Publication of notices.
1103.4 Participation.
1103.5 Consideration of comments received.
1103.6 Petitions for extension of time to comment.
1103.7 Availability of dockets.
1103.8 Adoption of final rules.
1103.9 Petitions for exemptions.
1103.10 Petitions for reconsideration.

AUTHORITY: 5 U.S.C. 552, 553 and 559.

SOURCE: 44 FR 42559, July 19, 1979, unless otherwise noted.

§ 1103.1 Applicability

This part contains general rulemaking procedures that apply to the issuance, amendment, and repeal of rules of the Interstate Commerce Commission, adopted under the procedures of section 553 of Title 5 of the United States Code (the Administrative Procedure Act).

§ 1103.2 Opening of proceeding.

(a) The Commission may open a rulemaking proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Commission to issue, amend, or repeal a rule.

(c) Each petition filed under this section must—(1) Be submitted, along with 10 copies, if possible, to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423;

(2) Set forth the text or substance of the rule or amendment proposed or

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specify the rule that the petitioner wants to have repealed or modified;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought.

(d) The Commission will grant or deny a petition within 120 days of its receipt.

(e) If the Commission determines that a petition contains adequate justification, it will open a rulemaking proceeding pursuant to § 1103.3 of this part and will notify the petitioner of its action.

(f) If the Commission determines that the petition does not contain adequate justification for opening a rulemaking proceeding, the petition will be denied, with a brief statement of the grounds for denial, and the petitioner will be notified of the Commission's action.

(g) If a petition under this section, concerning a common carrier by railroad, is granted, the Commission will begin the proceeding as soon as is practicable. If the petition is denied, the Commission will publish a statement of the reasons for the denial in the FEDERAL REGISTER.

§ 1103.3 Publication of notices.

(a) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The notice will be published in the FEDERAL REGISTER, and it will invite the public to participate in the rulemaking proceeding. No notice will be issued in instances where the Commission finds, for good cause, that notice is impractical or unnecessary or contrary to the public interest.

(c) Notices of proposed rules will include—(1) The proposed rules;

(2) A discussion of why the rules are needed and what they are intended to accomplish;

(3) Identification of significant dates in the proceeding, such as dates by which comments must be filed or on which the rules are proposed to take effect;

(4) Any relevant addresses;

(5) The name and phone number of an individual within the Commission who can provide further information concerning the proceedings;

(6) Any supplementary information required; and

(7) Reference to the legal authority under which the rule is proposed.

(d) In addition to being published in the FEDERAL REGISTER, notices of proposed rulemaking, and subsequent notices and decisions in rulemaking proceedings, will be served on the parties and made available to the public through the Office of the Secretary. To the extent possible, the date of service will be the same as the date of publication in the FEDERAL REGISTER. Where the service and publication dates are not the same, the date of publication in the FEDERAL REGISTER is controlling for the purpose of determining time periods set by these procedures or by notices issued in individual proceedings.

§ 1103.4 Participation.

Any person may participate in rulemaking proceedings by submitting written information or views. In addition, the Commission may invite persons to present oral arguments, participate in informal conferences, appear at informal, fact-finding hearings, or participate in any other proceeding. Information gathered as a result of any additional proceeding and information contained in written submissions will be given the same consideration.

§ 1103.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense or delay.

§ 1103.6 Petitions for extension of time to comment.

(a) Any person may petition the Commission for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Commission will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the FEDERAL REGISTER, and it will apply to all persons.

§ 1103.7 Availability of dockets.

Dockets of pending rulemaking proceedings will be maintained in the office of the Commission's Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1103.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the FEDERAL REGISTER.

§ 1103.9 Petitions for exemptions.

Any person may petition the Commission for a permanent or temporary exemption from any rule. Petitions should be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and should identify the rule involved and the arguments in favor of granting the exemption.

§ 1103.10 Petitions for reconsideration.

Any person may petition for reconsideration of the Commission's decision in a rulemaking proceeding. Petitions should be filed within 30 days of the date that the final decision is published in the FEDERAL REGISTER and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

PART 1104—PROCEDURES TO BE FOLLOWED IN MOTOR CARRIER REVENUE PROCEEDINGS

Subpart A—Common Carriers of General Commodities

Sec.
1104.1 Application.
1104.2 Traffic study.
1104.3 Cost study.
1104.4 Revenue need.
1104.5 Affiliate data.
1104.6 Summary of the increase proposal.
1104.7 News release.
1104.8 Official notice.
1104.9 Service.
1104.10 Availability of underlying data.

APPENDIX I TO SUBPART A

Subpart B—Intercity Bus Industry

1104.20 Application.
1104.21 Study carriers.
1104.22 Revenue data for study carriers.
1104.23 Revenue need.
1104.24 Offical notice.
1104.25 Service.
1104.26 Availability of underlying data.

SCHEDULES TO SUBPART B

Schedule A
Schedule B
Schedule C
Schedule D
Schedule E
Schedule F
Schedule G

APPENDIX I TO SUBPART B

AUTHORITY: (49 U.S.C. 305(h), 316(g), 316l; 5 U.S.C. 553v).

Subpart A—Common Carriers of General Commodities

SOURCE: 40 FR 26033, June 20, 1975, unless otherwise noted. Subpart A designated at 42 FR 32541, June 27, 1977.

§ 1104.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain: (1) Proposed gen-

eral increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal; or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1104.2–1104.5 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference.
Middlewest Motor Freight Bureau.
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference.
Southwestern Motor Freight Bureau, Inc.

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than $1 million the carriers will be required to submit only the data sought in §§ 1104.2 and 1104.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1104.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base calendar year—actual." This year shall be the calendar year tht has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following the end of the preceding calendar year, then the second preceding calendar year shall be considered as the "base calendar year—actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter. Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either $1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(c) Respondents shall take a sample of the traffic handled by the study

carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: Purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.[1]

(d) For cost and revenue purposes, the "carried" traffic basis shall be used. "Carried" traffic means the issue traffic handled solely by the study carriers, either single-line or interline. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of the tariff filing.

§ 1104.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic handled by the study carriers on the "carried" traffic basis by individual weight brackets included within the rate proposal, for: (1) The traffic study year, that is, the "base calendar year—actual," as hereinbefore defined; (2) a "present pro-forma year" reflecting conditions prevailing on a date no later than 45 days prior to the date of the tariff filing; and (3) a "restated proforma year" based on conditions anticipated on the effective date of the proposed rates, with a separation indicating projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues." Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in paragraph (a)(1) of this section.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix A for the same time periods indicated for the operating ratios plus a "restated proforma year" based on constructed revenue need.

(c) For both the operating ratios and the revenue-to-cost comparisons in Appendix A the "each-to-each" costing method, i.e., the application of each individual study carrier's unit costs to its traffic service units, applies only to the "base calendar year—actual." The application of possible labor and nonlabor cost increases for the purpose of updating the "base calendar year—actual" cost data may be accomplished by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual". The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one singleline sample shipment and by one interline sample shipments shall also be submitted. These sample shipments shall be on the "carried" basis.

§ 1104.4 Revenue need.

Traffic and cost study carriers, i.e., the study carriers, shall submit evidence of the sum of money, in addi-

[1] Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," Feb. 1, 1971, available from the Superintendent of Documents.

tion to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service this evidence shall include data required by Appendix A, parts I and II, and Appendix B.

§ 1104.5 Affiliate data.

Each individual traffic and cost study carrier having transactions with affiliates, subject ot the reporting requirements of schedules 9009-A and 9009-B in the annual report for Class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying data as will permit a reconciliation of these data to the data supplied in the appropraite schedules of each carrier's annual report.

§ 1104.6 Summary of the increase proposal.

The respondents shall submit a summary of the increase proposal, drafted in language directed at a reader who is not an expert in transportation matters and prepared in sufficient detail to apprise such a reader of the nature of the increase proposal. Pursuant to this purpose the summary will essentially contain the following:

(a) A general description of the increase proposal including its proponent(s), effective date, geographic scope, the amount of the increase, and a general description of holddowns, flagouts, and exceptions.

(b) A summary of the supporting rationale for the increase including why it is needed, what it will accomplish, an explanation in general terms for the presence of the holdowns, flagouts, and exceptions found therein; and as applicable, conclusions reached (1) in the traffic study, (2) in the cost study, (3) concerning the effect of transactions with affiliates on the parent's revenue need, and (4) with regard to the sum of money which the carrier asserts it requires to insure its financial stability.

(c) A statement indicating that copies of the proposal, the entire evidentiary case in support thereof, and this summary have been furnished to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal.

(d) A statement as follows: "The proposed tariff" contains the only legal terms of the increase binding on the parties." (*"(A)nd/or petition" if applicable).

§ 1104.7 News release.

The respondents shall submit a notice of the increase proposal, suitable for forwarding as a news release, and prepared so that the public in general may be apprised of the increase proposal; and which pursuant to this purpose as a minimum will contain essentially the following:

(a) A statement directed at the editor of a newspaper stating that the news release has been prepared in accordance with regulations of the Interstate Commerce Commission so that the public in general may be apprised of the increase proposal, and requesting that the information being forwarded be given prominent placement in the newspaper so that as large a segment as possible of the public in general may be apprised thereof.

(b) A description, in language sufficient to apprise a reader who is not an expert in transportation matters, of the nature of the proposal—including the amount of the increase, the proponent(s) its geographic scope, and, in general terms, holddowns, flagouts, and exceptions.

(c) A statement summarizing the supporting rationale for the increase, including why it is needed, what it will accomplish, and, in general terms, accounting for the presence of the holddowns, flagouts, and exceptions.

(d) A statement indicating that copies of the proposal, the evidentiary case in support thereof, and a summary statement have been forwarded to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal; and indicating that the public may also obtain copies of those documents by writing

to "(*Here the name and address of the carrier or publishing agent will be inserted*)."

§ 1104.8 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission

§ 1104.9 Service.

(a) The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement (including the summary and the news release) for use by the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(b) One copy of each statement excluding the news release, shall be sent by first-class mail (1) to each of the regional and district offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection; (2) to the State regulatory agency responsible for such matters in States served by the carrier and affected by the proposal; and (3) to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory. However, one copy of each statement, excluding the news release, shall be sent by express mail to any person undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission.

(c) A copy of the news release, will be transmitted to the major news wire services and the principal newspaper of general circulation in the capital and four largest cities of each State served by the carrier and affected by the proposal. For the purpose of this requirement, the principal newspaper of general circulation is that newspaper of general circulation published in a city having the largest average daily circulation. Where such service is made by mail, the news release shall be mailed in time to be received on the date the original is filed with the Commission.

(d) Otherwise, the service requirements of Rule 22 of the Commission's General Rules of Practice should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

[40 FR 26033, June 20, 1975, as amended at 45 FR 48150, July 18, 1980]

§ 1104.10 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since Appendix A data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete Appendix A should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

[46 FR 34594, July 2, 1981]

APPENDIX I TO SUBPART A

Revised Appendix A: Verified statement of fuel expenses and related data in support of requested fuel rate increase

Filed by: ———————— Address: ————————

Line No. and Item (a)	Ratemaking carrier (b)	Owner-operator (if applicable) (c)
1 (a) Requested fuel rate increase, current period over base period (Not to exceed percent on line 15 col. (b)) (Percent. Effective date: (Mo.) (Day) (Yr.)	%	xxx
(b) Last fuel rate increase granted under this proceeding. (Percent) Effective date: (Mo.) (Day) (Yr.)	%	xxx
I. BASE PERIOD DATA: JUNE, 1975		
2 Fuel expenses, including taxes	$	$
3 Number of gallons purchased		
4 Average purchase price per gallon of fuel, including taxes (L.2÷L.3) (Cents to 2 dec.)	¢	¢
II. CURRENT PERIOD DATA		
5 Indicate month/year for which current period data (Lines 6 through 12) are applicable: (Mo.) (Yr.).		
6 Fuel expenses, including taxes	$	$
7 Number of gallons purchased		
8 Average purchase price per gallon of fuel, including taxes (L.6÷L.7) (Cents to 2 dec.)	¢	¢
9 Total operating revenues	$	xxx
10 Payments to owner-operators	xxx	$
11 Revenues retained by ratemaking carrier when transportation is performed by owner-operator.	$	xxx
12 Balance of operating revenues (L.9, col. (b)) Minus (L.10, col. (c)+L.11, col. (b))	$	xxx
III. PERCENT THAT INCREASED FUEL COSTS IS OF TOTAL OPERATING REVENUES		
13 Increase in purchase price per gallon of fuel, including taxes (L.8−L.4) (Cents 2 dec.)	¢	¢
14 Increase in fuel expenses, including taxes, current period over base period: (L.7×L.13)	$	$
15 Percent that increased fuel costs, including taxes, is to total operating revenues (L.14 cols. (b) and (c))÷(L.9). (2 decimals).	%	xxx

IV. OTHER MATTERS

VERIFICATION

(State) ————————————

ss:

(County) ————————————

————————————, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

————————————

(Signature)

Subscribed to and sworn before me, a Notary Public, this ———— day of ———— (Month) ————, (Year) ——.

————————————

(Notary Public)

My Commission expires. ————

[40 FR 20363, June 20, 1975, as amended at 40 FR 39868, Aug. 29, 1975. Redesignated at 42 FR 32541, June 27, 1977]

Subpart B—Intercity Bus Industry

SOURCE: 42 FR 32541, June 27, 1977, unless otherwise noted.

§ 1104.20 Application.

(a) Upon the filing by the National Bus Traffic Association, Inc., (NBTA) on behalf of its carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain proposed general increases in fares or charges where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal, the motor common carriers of passengers on whose behalf such schedules are filed shall, concurrently with the filing of those schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later

than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1104.21–1104.23 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the current situation.

(b) When filing tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

[42 FR 32541, June 27, 1977, as amended at 42 FR 40860, Aug. 12, 1977]

§ 1104.21 Study carriers.

(a) For the purposes of this proceeding the "study carriers" shall consist of those Class I motor common carriers of passengers which are members of NBTA and which, during the latest calendar year available preceding the filing date of the proposed increase in fares and/or charges, derived $500,000 or more in annual operating revenues from the issue traffic, or 1 percent or more of the total annual operating revenues received by all Class I carriers from the issue traffic. Issue traffic is defined as that traffic (services) directly affected by the proposed increases in fares and/or charges.

(b) To corroborate the selection of the above study carriers, and to provide a data base for a continuing evaluation of the validity and usefulness of those carriers as a study group, respondents shall submit, as a part of their verified statement (justification), a list of all Class I motor common carriers of passengers participating in the issue traffic (services). For the above specified calendar year, the dollar amounts of total system operating revenues for each such carrier shall be arrayed in descending order; and, there shall be shown the amount of annual operating revenues received by each carrier from the total traffic at issue. Also, to be shown is the percent that each such carrier's total issue traffic revenue is to its total system revenues, and the percent that each carrier's total issue traffic revenue is to the total issue traffic revenues for all Class I carriers indicated in the above list. This list of carriers and the carrier's applicable revenues shall be referreed to as Schedule A, Class I Participating Carriers' Revenue Data.

[42 FR 40860, Aug. 12, 1977]

§ 1104.22 Revenue data for study carriers.

The study carriers, as identified above, shall submit the revenue data called for in Schedule B herein, the purpose of which is to determine the amount of increased revenues which might be expected under the proposed increase in fares and/or charges on the issue traffic, and to evaluate the revenue aspects of the non-issue traffic, including that traffic subject to Interstate Commerce Commission rate regulation but not here at issue, and that traffic which is intrastate in character and under the jurisdiction of state public commissions.

[42 FR 40860, Aug. 12, 1977, as amended at 42 FR 56333, Oct. 25, 1977]

§ 1104.23 Revenue need.

The "study carriers" shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capability to render service. This evidence shall include data required by Schedules C through G.

§ 1104.24 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1104.25 Service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and

16 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. One copy of each statement shall be sent first-class mail to each of the regional offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general increase in bus passenger fares in the affected area or territory. Otherwise, the service requirements of Rule 22 of the Commision's General Rules of Practice shall be observed.

§ 1104.26 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if, and to the extent, specifically requested in writing and required by any party for the purpose of cross-examination.

SCHEDULE A—CLASS I PARTICIPATING CARRIERS' REVENUE DATA

[Dollars in thousands]

Line No. and carrier annual report No. (a)	Carrier (b)	Study code (c)	Total system operating revenue (d)	Total issue traffic revenue (e)	Percent of carrier's issue traffic revenue to—	
					Total system revenues, col. (e) ÷ col. (d) (2 Dec.) (f)	Total issue traffic revenues (percent dist. of col. (e) (2 Dec.) (g)
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

EXPLANATORY—SCHEDULE A

Purpose. The purpose of Schedule A is to corroborate the selection of the "study carriers", as defined in § 1104.21 of the prescribed procedures, and to provide a data base for the continuing evaluation of the validity and usefulness of the "study carrier" group.

Calendar Year. For the purpose of this schedule use the latest calendar year available preceding the filing date of the proposed increased fares and/or charges.

Column (a). The annual report number is that number assigned to the carrier by the Bureau of Accounts, Interstate Commerce Commission, for identification purposes.

Column (b). List Class I carrier members of national Bus Traffic Association and other interested Class I carriers participating in the tariffs of NBTA which will be affected by the proposal, in descending order of total system operating revenues.

Column (c). Use the following code for this column. For study carriers (as defined in § 1104.21) insert "S". For non-study carriers insert "NS".

Column (d). Use amount shown in carrier's Annual Report, Schedule 2998, Line 9.

Column (e). Issue traffic is defined as that traffic (services) directly affected by the proposed increase in fares and/or charges.

Columns (f) and (g). These columns are self-explanatory and are obtained by calculations using columns (d) and (e).

SCHEDULE B—STUDY CARRIERS' REVENUE DATA

[Dollars in thousands]

Line No. and study carrier (a)	Total operating revenue (b)	Issue traffic (services) revenue		Total issue traffic revenue (d)	Total nonissue traffic revenue (e)	Miscellaneous station and other operating revenues (f)
		(C-1)	(C-2)			
Base year actual: 4-quarter period ending ————						
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
Total, all study carriers						
Pro forma year based on proposed revenues						
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						

SCHEDULE B—STUDY CARRIERS' REVENUE DATA—Continued

[Dollars in thousands]

Line No. and study carrier (a)	Total operating revenue (b)	Issue traffic (services) revenue		Total issue traffic revenue (d)	Total nonissue traffic revenue (e)	Miscellaneous station and other operating revenues (f)
		(C-1)	(C-2)			
23						
24						
25						
Total, all study carriers						
Pro forma year based on current revenues						
1						
2						
3						
4						
5						
6						
7						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
Total, all study carriers						

EXPLANATORY—SCHEDULE B

Purpose. The purpose of this schedule is to obtain—for each study carrier and by totals for all study carriers—(1) total operating revenue, (2) revenues attributable to the various types of traffic at issue, (3) revenue attributable to the total non-issue traffic, and (4) miscellaneous station and other operating revenues. These data shall be provided for the specified study periods, namely: Base year actual, pro forma year based on current revenues, and pro forma year based on proposed revenues.

The pro forma year based on proposed revenues for the traffic at issue will be compared to the issue traffic revenues for the pro forma year based on current revenues and for the base year actual to determine the amount of the proposed revenue increase being sought over these two periods. In addition, the revenue data for the total issue traffic (column (d)), will be used in Schedule C, Part III as a basis for allocating increased costs, i.e., the increased operating expenses and the increased "sum of money" costs.

Base Year Actual. Data to be reported in this and other schedules herein for the base year actual shall be based on the 4-quarter calendar year periods identified below:

FILING MONTH OF VERIFIED STATEMENT

January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data

for a more current quarter than that specified are obtainable then that more current quarter may be used in the base year actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year are obtainable, then the base year actual ending December 31 may be used in lieu of the base year actual ending September 30.

Pro forma year data. Revenue data for the pro forma year shall be reported in two ways, namely: based on current revenues and based on proposed revenues. Separate schedules are required for each pro forma year. These data do not represent a forecast but reflect the results of 12 months of operation at particular rate levels. Thus, data for the pro forma year based on current revenues should be based on a restatement of the revenue data for the base year actual to reflect fares and/or charges which are currently in effect. Similarly data for the pro forma year based on proposed revenues should reflect a restatement of the base year actual data but at levels reflecting the proposed fares and/or charges.

Column (a). Insert in this column the company name of each "study carrier" as defined in § 1104.21 of the prescribed procedures.

Column (b). Use carrier's Annual Report, Schedule 2998, Line 9. The dollar amount in this column, for each study carrier, should equal the toal of columns (d), (e), and (f).

Columns (c-1), (c-2), etc. As defined in § 1104.21, "issue traffic" means that traffic (service) affected by the proposed increase in fares and/or charges, and is limited to the fares and/or charges published in schedules and tariffs filed with the Interstate Commerce Commission. For the purpose of the proposed increases filed under the prescribed procedures of this proceeding, column (c) should be subdivided into columns (c-1), (c-2), etc. to show separately the revenue for each type of traffic in issue and each column should be appropriately headed. For instance, a proposal to increase passenger fares and express rates would call for Intercity Passenger Revenue in column (c-1), and Express Revenue in column (c-2). If a third basic service is included in the proposed increase, column (c-3) should show revenue from that traffic with an appropriate identification in this column heading.

Column (d). The total issue traffic revenues in this column should equal the sum of columns (c-1), (c-2), etc.

Column (e). The revenues to be reported in this column shall consist of those revenues other than "total issue traffic revenue" (Column (d)), and "miscellaneous station and other operating revenues" (Column (f)). Thus, "non-issue traffic revenue" means those revenues accruing from providing the types of services indicated in columns (c-1), etc., but which may be "intrastate" in nature, are "exempt" as provided under Section 22 of the Interstate Commerce Act, or which are otherwise not at issue in a proposed fare and/or charge increase. Such non-issue traffic may also include a commuter or mass transportation service, which is the transportation of passengers generally performed within a city or town and the suburban areas contiguous thereto. However, in some instances this service may also be intercity in character where the cities involved are within relatively short distances of each other and the primary purpose is the mass transportation of commuter passengers to and from these cities.

Column (f). For the purpose of this schedule the revenues to be reported in this column shall consist of those in Account 3600, Miscellaneous Station Revenue, and in Account 3900, Other Operating Revenue. (See 49 CFR 1206.)

Presentation of statement on revenue sample studies. Historically, in order to separate interstate from intrastate revenues, it has not been necessary for annual report purposes for each carrier to conduct studies of its traffic operations, whether based upon sampling or otherwise, however, many of the Class I carriers make such studies for managerial purposes. In order to permit the evaluation of such studies, and the evidence derived therefrom, each study carrier, as defined in section 1104.21, shall submit an affidavit explaining how its study was conducted and how it appraises the reliability of the results. Carriers having studies based upon sampling should conform with the staff report entitled "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971.

SCHEDULE C

Part I.—Condensed income statement

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source A.R. schedule 2998 (b)	Base year-actual (c)	Pro forma year		
			Based on current revenue (d)	Based on proposed revenue (e)	Based on constructed revenue needs (f)
1 Passenger revenue	L. 1				
2 Special bus revenue	L. 2				
3 Baggage revenue	L. 3				
4 Mail revenue	L. 4				
5 Express revenue	L. 5				
6 Newspaper revenue	L. 6				
7 Miscellaneous station revenue	L. 7				
8 Other operating revenue	L. 8				
9 Total revenues	L. 9				
10 Total expenses	L. 15				
11 Net operating revenue	L. 16				
12 Rent for lease of carrier property-debt	L. 17				
13 Income from lease of carrier property-credit.	L. 18				
14 Net carrier operating income	L. 19				
15 Total other income	L. 30				
16 Gross income	L. 31				
17 Interest and amortization of debt discount expenses and premium.	Sums of lines 32, 35, and 36.				
18 Total income deductions	L. 39				
19 Income (loss) from continuing operations before income taxes.	L. 40				
20 Income taxes on income from continuing operations.	L. 41				
21 Provision for deferred taxes	L. 42				
22 Income (loss) from continuing operations.	L. 43				
23 Total income (loss) from discontinued operations.	L. 46				
24 Total extraordinary items and accounting changes (debit) credit.	L. 53				
25 Net income (loss) transferred to retained income-unappropriated.	L. 54				

Part II.—System operating expenses and sum of money assigned to transportation service

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro forma year		
			Based on current revenue (d)	Based on proposed revenue (e)	Based on constructed revenue needs (f)
1 Operating expenses "sum of money" items.	Pt. I, L. 10				
2 Rent for, and from, lease of carrier property (net).	Pt. I, net of ls. 12 and 13				
3 Interest and amortization of debt discount and expense and premium on debt.	Pt. I, L. 17				
4 Percent of carrier operating property to total tangible property.	A. R. Sch. 100, col. (b) (ls. 19 and 21) ÷ (L. 26) (2 dec.).				
5 Interest and related expenses assigned to transportation service.	L. 3 × L. 4, above (pt. I, L. 14) minus (pt. II, L. 5).				
6 Taxable income assigned to transportation service.	....do				

Part II.—System operating expenses and sum of money assigned to transportation service—Continued

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro forma year		
			Based on current revenue (d)	Based on proposed revenue (e)	Based on constructed revenue needs (f)
7 Taxable income from continuing operations.	Pt. I, L. 19				
8 Percent of taxable income assigned to transportation service to taxable income from continuing operations.	L. 6÷L. 7, above (2 dec.)				
9 Total income taxes	Pt. I. L. 20				
10 Income taxes assigned to transportation service.	L. 8×L. 9, above				
11 Income (loss) assigned to transportation service.	L. 6 minus L. 10, above				
12 Total "sum of money" items assigned to transportation service.	Ls. 2, 5, 10 and 11				
13 Operating expenses and "sum of money" assigned to transportation service.	Ls. 1 and 12, above				
14 Ratio of income (loss) assigned to transportation to income (loss) from continuing operations (1 dec.).	Pt. II, L. 11÷Pt. I, L. 22				

Part III.—Allocation of increased system operating expenses and sum of money to traffic at issue

[Dollars in thousands]

Line No. and Item (a)	Source (b)	Base year-actual (c)	Pro forma year		
			Based on current revenue (d)	Based on proposed revenue (e)	Based on constructed revenue needs (f)
A.—Revenue distribution					
1 Revenues applicable to traffic at issue	From revenue study				
2 System operating revenues, less miscellaneous station revenues (3600) and other operating revenues (3900).	Sch. C, pt. I, L. 9-Ls. 7 and 8.				
3 Percent of total issue traffic revenue to L.2 revenues.	L.1÷L.2 (percent to 2 dec.).				
B.—Allocation to traffic at issue					
4 Increased system operating expenses	Pt. II, line 1				
5 Increased system "sum of money"	Pt. II, line 12				
6 Total increased system operating expenses and "sum of money".	L.4+L.5, above				
7 Allocation of line 6 to traffic at issue	L.3×L.6, above				
8 Increased revenues on traffic at issue	L.1, above				
9 Ratio of increased revenues to increased costs on traffic at issue.	L.8÷L.7, above (2 dec.)				

EXPLANATORY—SCHEDULE C (PARTS I AND II)

Purpose. The purpose of Schedule C, Parts I and II is to develop a condensed income statement, and the system operating expenses and "sum of money" assigned to transportation service, for the study carriers and for the study periods specified. These data are used in Schedule C, Part III, to measure the "cost increases" allocated to the traffic at issue, over specified time periods, and then to compare these increases with the increased revenues.

Study carrier groupings. A separate Schedule C, Parts I and II shall be prepared for each of the following:

1. Greyhound Lines, Inc.

2. Trailways combined (study carrier, only).

3. All study carriers.

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable annual report sources.

Column (c). Data to be reported in this column for the base year actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30 preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	March 31, filing month year.
August	Do.
September	Do.
October	June 30, filing month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in the event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current quarter may be used in the base year actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year are obtainable then the base year actual ending December 31, may be used in lieu of the base year actual ending September 30.

Columns (d), (e), and (f). These columns shall contain the pro forma year data. The data in columns (d) and (e) do not represent a forecast, but the results of 12 months of operations at cost and fare/charge levels existing at a specific time.

The data reported in column (d) shall be the base year actual (column (c)) restated to reflect conditions (wage, price, and productivity, etc.) prevailing on or near the effective data of the proposed increase. Revenues in column (d) shall be based on fares and charges which are currently in effect.

The data reported in column (e) shall also be the base year actual (column (c)) restated to reflect conditions (wage, price and productivity, etc.) prevailing on or near the effective data of the proposed increase. Unlike column (d), however, revenues in column (e) shall be based on the proposed fares and charges.

The data reported in column (f) shall be based on what the system revenue needs of the study carriers should be at a given time, including the constructed operating expenses and the constructed "sum of money" above these expenses. The constructed "sum of money" should be supported by evidence that it is a just and reasonable amount and is that needed to attract debt and equity capital and to insure financial stability and the capacity to render service. Such evidence should include an analysis of the adequacy of the carriers' earnings, the carriers' cost of debt and equity capital, the various kinds of risk attending their operations and the financing thereof, and the carriers' ongoing needs for working capital, new equipment and facilities.

Pro forma year data. Data for the pro forma time periods shall be appropriately explained and supported. Each of the dollar figures called for in these columns shall be accompanied by an explanation of the bases or methods of restatement and explicit identification of all assumed changes in income statement data, including changes in revenues, expenses, wage rates, price levels and productivity, as compared with the base year actual results. This evidence should be adequate to enable the Commission to find that the proposed fare/charge increase:

(a) Is cost justified and does not reflect future inflationary expectations;

(b) Takes into account expected and reasonable productivity gains;

(c) Is not excessive in that it does not exceed those operating expenses and "sum of money" costs needed to provide adequate and safe service or to provide for necessary expansion to meet future requirements for transportation services; and

(d) Is not excessive in that it does not exceed that rate of return needed by the carriers to attract debt and equity capital at reasonable costs.

Part II, line 9, note. Line 9 does not give effect to the "Provision for Deferred Taxes" (Part I, Line 21); however, the effect of "deferred taxes" can be computed by the Commission's staff as part of its analytical process. Nonetheless, because the "prescribed rules" represent only the minimum evidential requirements, should proponents or any other party wish to submit an additional Schedule C, Part II, giving effect to the "deferred taxes", it may but appropriate notations should be made. To give effect to "deferred taxes" the source (column (b)) for Schedule C, Part II, line 9 should be: Part I, Ls. 20 and 21.

Explanatory—Schedule C (Part III)

Purpose. The purpose of Schedule C, Part III, is threefold: First, to develop the percentage relationship between total issue traffic revenue and total system operating revenues (less miscellaneous station, and other operating revenues) (Line 3); Second, to allocate the increased system operating expenses and "sum of money" items to the

traffic at issue (Line 7); and Third, to make a comparison of the increased expenses and sum of money items on the issue traffic with the increased revenues on this traffic (Line 9). Four time periods are used to measure the increase in expenses, sum of money items, and revenues, namely: (a) the base year actual, (b) the pro forma year based on current revenue, (c) the pro forma year based on proposed revenue, and (d) the pro forma year based on constructed revenue needs. These time periods are identified in explanatory for Schedule C, Parts I and II.

The critical procedure in Part III is the allocation of increased system operating expenses and sum of money items to the traffic at issue based on revenue relationships, i.e., based on the percentage relationship of the total issue traffic revenues to the total system revenues with minor deletions. This procedure is necessary at this time because of the absence of regulatory or managerial accounting systems designed for "costing" purposes, or, in the alternative, a "cost formula" which, together with appropriate data from engineering and traffic studies, could be used to "cost out" the particular bus transportation services that may be at issue in a given general increase proceeding. The fallacy in using revenues as an allocation factor is the assumption that there is a direct relationship between revenues and costs, or, in other words, that revenues bear the same relationship to costs regardless of the type of transportation services provided. However, differential charging is an economic fact, and cost of service is not the sole factor to be considered in rate making.

Notwithstanding the deficiency in using revenues as an allocation factor, it is necessary to obtain some expression of how the increased systemwide operating expenses, and sum of money items may be impacting on the traffic at issue. An evaluation of this impact is essential to determine whether, in fact, the issue traffic is bearing "too much" or "too little" of the increased costs and the overall burden vis-a-vis the "non-issue" traffic which may include traffic which is interstate or intrastate in character—with the latter traffic being regulated by state utility commissions.

Study carrier groupings. The study carrier groups for Part III shall be the same as those designated for Parts I and II.

Time periods. The time periods shown in Part IIIA, Revenue Distribution, are the same as those indicated for Parts I and II. However, in Part IIIB, Allocation to Traffic at Issue, although the time periods are the same as in Part IIIA, they are used to measure possible increases in operating expenses, sum of money, and revenues. Thus, in Schedule C, Part IIIB, possible increases are measured based on a comparison between the pro forma years, on the one hand, and the base year actual, on the other hand. But other comparisons can be made. For example, a comparison can be made between the operating expenses, sum of money, and revenues for the "pro forma year based on constructed revenue needs" and the respective items for the "pro forma year based on current revenue."

Line 1, revenues applicable to traffic at issue. Data applicable to columns (c) through (f) on this line should be obtained from records or special studies of the individual carriers and appropriately combined into the study carrier groups required for Schedule C. Since there are no industrywide studies or data applicable to the issue traffic, the study carriers should be careful to maintain proper records of the underlying data in the event the Commission should request their submission. (See — rules Section 1105.7).

Lines 2 and 3. These lines are self-explanatory.

Lines 4, 5 and 6. These lines represent the increased system operating expenses (Line 4), increased system sum of money (Line 5), and the total of these items (Line 6). For example, for Part III, Line 4, Column (c), pro forma year based on current revenues over the base year actual, the increased system operating expenses are obtained by subtracting the total expenses shown in Schedule C, Part II, Line 1, Column (c), from the comparable total expenses shown in Schedule C, Part II, Line 1, Column (d). The increased sum of money items to be shown on Part III, Line 5 are obtained in a smiliar manner but using Schedule C, Part II, Line 12. Part III, Line 6, then represents a total of Lines 4 and 5.

Line 7. This line represents an allocation of the total increased system operating expenses and sum of money (Line 6) to the traffic at issue, and is obtained by multiplying the amounts on Line 6 by the respective column percentages shown on Line 3.

Line 8. The increases in revenues on the traffic at issue are obtained from Part III, Line 1, by using the time periods specified. For example, the increased revenues on the issue traffic for the pro forma year based on current revenues over the base year actual is obtained by subtracting the revenues shown on Part III, Line 1, column (c) from the revenues shown on Line 1, Column (d).

Line 9. This line represents the ratio of increased revenues to increased costs and is obtained by dividing Line 8 by Line 7.

[42 FR 32541, June 27, 1977; 42 FR 40861, Aug. 12, 1977]

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SCHEDULE D

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year actual (e)
PART I.—Selected financial data				
Income statement data:				
1 Total revenues	Sch. 2998, L. 9			
2 Total expenses	Sch. 2998, L. 15			
3 Depreciation expense and amortization of carrier operating property.	Sch. 2998, L. 11 + L. 12			
4 Lease of carrier property (net)	Sch. 2998, L. 17 + L. 18			
5 Net carrier operating income	Sch. 2998, L. 19			
6 Equity in earnings (losses) of associated companys.	Sch. 2998, L. 29			
7 Interest on long-term obligations	Sch. 2998, L. 32			
8 Amortization of debt discount and expense and premium on debt (net).	Sch. 2998, L. 35 + L. 36			
9 Pretax income (loss)	Sch. 2998, L. 40			
10 Tax on income from continuing operations	Sch. 2998, L. 41			
11 Provision for deferred taxes	Sch. 2998, L. 42			
12 Income (loss) from continuing operations	Sch. 2998, L. 43			
13 Total income (loss) from discontinued operations.	Sch. 2998, L. 46			
14 Total extraordinary items and accounting changes—(debit) credit.	Sch. 2998, L. 53			
15 Net income (loss)	Sch. 2998, L. 54			
Balance sheet data:				
16 Current assets	Sch. 100, L. 17, col. (b)			
17 Current liabilities	Sch. 101, L. 14, col. (b)			
18 Current assets [1]	Sch. 100, L. 17			
19 Current liabilities [1]	Sch. 101, L. 14			
20 Long-term debt due within 1 yr	Sch. 101, L. 15, col. (b)			
21 Long-term debt due after 1 yr	Sch. 101, L. 24, col. (b)			
22 Long-term debt due within 1 yr [1]	Sch. 101, L. 15			
23 Long-term debt due after 1 yr [1]	Sch. 101, L. 24			
24 Owners' equity	Sch. 101, L. 38 + L. 41 + L. 44 — L. 45, col. (b).			
25 Owners' equity [1]	Sch. 101, L. 38 + L. 41 + L. 44 — L. 45.			
26 Total intangible property [1]	Sch. 100, L. 31			
27 Net carrier operating property (owned plus leased to others) [1].	Sch. 100, L. 19 + L. 21			
28 Investment in owned and leased property plus working capital.	L. 27 + L. 18 — L. 19			
Miscellaneous and financial ratios:				
29 Cash dividend appropriations	Sch. 2930, L. 16			
30 Operating ratio (percent)	L. 2 ÷ L. 1			
31 Current ratio	L. 16 ÷ L. 17			
32 Dividend payout ratio (percent)	L. 29 ÷ L. 15			
33 Throwoff to debt ratio (percent)	(L. 3 + L. 15) ÷ (L. 20 + L. 21).			
34 Capital structure ratio (percent)	(L. 20 + L. 21) ÷ (L. 20 + L. 21 + L. 24).			
35 Working capital	L. 18 — L. 19			
36 Rate of return on owned and leased operating property plus working capital (percent).	L. 5 ÷ L. 28			
37 Rate of return on owners' equity, less intangibles (percent).	L. 15 ÷ (L. 25 — L. 26)			
38 Rate of return on total capitalization (percent).	(L. 7 + L. 8 + L. 15) ÷ (L. 22 + L. 23 + L. 25).			
PART II. Accounts giving effect to interperiod tax allocation (deferred taxes) and impact of investment tax credit				
Balance sheets accounts:				
1 Deferred income tax charges	Sch. 100, L. 16, col. (b)			
2 Accumulated deferred income tax charges	Sch. 100, L. 44, col. (b)			
3 Deferred income tax credits	Sch. 101, L. 13, col. (b)			

SCHEDULE D—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and Item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year actual (e)
4 Accumulated deferred income tax credits	Sch. 101, L. 27, col. (b)			
Income statement accounts:				
5 Provision for deferred taxes	Sch. 2999, L. 42			
6 Provision for deferred taxes—Extraordinary items.	Sch. 2998, L. 50			
7 Impact of investment tax credit on continuing operations.	See explanatory			

[1] Show average of beginning and end-of-year figures.

EXPLANATORY—SCHEDULE D (PART I)

Purpose. The purpose of Schedule D (Part I) is to ascertain the financial posture of Greyhound Lines, Inc. and all the study carrier carriers by an analysis of certain key financial data, with a view to determining revenue needs.

Study Carrier Groupings. Schedule D (Part I) shall be prepared on the following two bases:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Column (c). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 3rd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (c) shall report data for calendar year 1974.

If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on Nov. 15, 1977, column (c) should report data for calendar year 1975.

Column (d). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (d) should be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (d) should report data for calendar year 1975.

If the rate increase is filed during the last six months of the calendar year, the data reported in column (d) shall be based on the 1st calendar year preceding the filing year. If, for example, the fare/charge increase is filed on November 15, 1977, column (d) should report data for calendar year 1976.

Column (e). Data to be reported in this column for the base year actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current quarter may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable, the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30.

EXPLANATORY—SCHEDULE D (PART II)

Purpose. Schedule D (Part II) is designed to segregate the impacts of: (1) the Commission's deferred tax accounting rule change; and (2) the impact of the investment tax credit on continuing operations.

Study Carrier Groupings. The study carrier groups for Part II shall be the same as those designated for Part I.

Column (b.) The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Columns (c), (d) and (e). The reporting periods for Part II shall correspond to those in Part I.

Investment Tax Credit Impact. This impact is: (1) the amount by which Account 8000, Income Taxes on Income from Continuing Operations, was credited for the investment tax credit if the flow-through accounting method was elected or (2) the amount by which Account 8040, Provision for Deferred Taxes, was credited for the amortization of the investment tax credit if the deferral accounting method was elected.

[42 FR 32541, June 27, 1977; 42 FR 40861, Aug. 12, 1977]

SCHEDULE E.—STATEMENT OF CHANGES IN FINANCIAL POSITION

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year-actual (e)
SOURCES OF WORKING CAPITAL				
Working capital provided by operations:				
1 Net income (loss) before extraordinary items.	Sch. 2998, L. 47, col. (b)			
Add expenses not requiring outlay of working capital (subtract) credits not generating working capital:				
2 Loss (gain) on sale or disposal of tangible property.	Sch. 5091, L. 7, col. (b)			
3 Add depreciation and amortization expense.	Sch. 2998, Ls. 11+12+35+36, col. (b).			
4 Net increase (decrease) in deferred income taxes.	Sch. 2998, L. 42, col. (b)			
5 Net decrease (increase) in parent's share of subsidiary's undistributed income for the year.	Sch. 2998, L. 28			
6 Net increase (decrease) in noncurrent portion of estimated liabilities.	Sch. 101, L. 31, cols. (b)-(c)			
7 Other (specify):				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18 Total working capital from operations before extraordinary items.				
19 Extraordinary items and accounting changes.	Sch. 2998, L. 53, col. (b)			
Add expenses not requiring outlay of working capital (subtract) credits not generating working capital.				
20 Loss (gain) on extraordinary items	Sch. 2998, L. 48, col. (b)			
21 Net increase (decrease) in deferred income taxes.	Sch. 2998, L. 50, col (b)			
22 Cumulative effect of changes in accounting principles.	Sch. 2998, L. 52, col. (b)			
Other (specify):				
23				
24				
25				
26				
27				
28 Total working capital from extraordinary items and accounting changes.				
29 Total working capital from operations (lines 18 and 28).				
Working capital from sources other than operating:				
30 Proceeds from issuance of long-term liabilities.				

SCHEDULE E.—STATEMENT OF CHANGES IN FINANCIAL POSITION—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All study carriers

Line No. and item (a)	Source (b)	Calendar year 19— (c)	Calendar year 19— (d)	Base year-actual (e)
31 Proceeds from sale/disposition of carrier operating property.	Sch. 1200-A, L. 9			
32 Proceeds from sale/disposition of other tangible property.				
33 Proceeds from sale/repayment of investments advances.	Sch. 1600/1650, ls. 23+47			
34 Net decrease in sinking and other special funds.	Sch. 1700, ls. 15+31+50, cols. (d)-(j).			
35 Proceeds from issue of capital stock	Sch. 2700A/2710A, L. 12, cols. (e)+(f)—(i).			
Other (specify):				
36				
37				
38				
39				
40				
41 Total working capital from sources other than operating.				
42 Total sources of working capital (lines 29 and 41).				
APPLICATION OF WORKING CAPITAL				
43 Amount paid to acquire/retire long-term liabilities.				
44 Cash dividends	Sch. 2930, L. 16			
45 Purchase price of carrier operating property.	Sch. 1200, L. 11, col. (c)			
46 Purchase price of other tangible property				
47 Purchase price of long-term investments and advances.	Sch. 1600/1650, ls. 23+47, col. (e).			
48 Net increase in sinking or other special funds.	Sch. 1700, ls. 15+31+50, cols. (j)-(d).			
49 Purchase price of acquiring treasury stock	Sch. 2700B/2710B, L. 12, col. (c).			
Other (specify):				
50				
51				
52				
53				
54				
55 Total application of working capital				
56 Net increase (decrease) in working capital (line 42 less line 55).				

EXPLANATORY—SCHEDULE E

Purpose. Schedule E is designed to provide the Commission with an indication of the carrier's sources and uses of funds over the recent past.

Study Carrier Groupings. Schedule E shall be prepared on the following two bases:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

"Funds". The term "Funds" for the purpose of this schedule shall include all assets or financial resources even though a transaction may not directly affect cash or working capital. For example, the purchase of property in exchange for bonds or shares of stock would be an application of funds for investment in property provided by the issue of securities.

Sources and uses of funds should be individually disclosed. For example, outlays for fixed assets should not be reported net of retirements.

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Column (c). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 3rd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977,

column (c) shall report data for calendar year 1974.

If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on Nov. 15, 1977, column (c) should report data for calendar year 1975.

Column (d). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (d) should be based on the 2nd calendar year preceding the filing year. For example, if the rate increase is filed on May 15, 1977, column (d) should report data for calendar year 1975.

If the rate increase is filed during the last six months of the calendar year, the data reported in column (d) shall be based on the 1st calendar year preceding the filing year. If, for example, the fare/charge increase is filed on November 15, 1977, column (d) should report data for calendar year 1976.

Column (e). Data to be reported in this column for the base year-actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Do.
April	Dec. 31, preceding year.
May	Do.
June	Do.
July	Mar. 31, filing-month year.
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current quarter may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable, the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30

[42 FR 32541, June 27, 1977; 42 FR 40861, Aug. 12, 1977]

SCHEDULE F.—AFFILIATE REVENUE DATA FOR SERVICES RENDERED

[Dollar in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All Study carriers

Line No. and Item (a)	Calendar year 19— (b)	Calender year 19— (c)	Base year-actual (d)
affiliate revenues for services rendered to respondents			
1 Engineering			
2 Management			
3 Legal			
4 Accounting			
5 Financial			
6 Furnishing of materials and supplies			
7 Leasing of land, structures, and vehicles			
8 Purchase of equipment			
9 Construction			
10 All other services			
11 Total affiliate revenues for services rendered to respondent (lines 1 through 10)			
12 Total affiliate revenues for services rendered to other than respondents			
13 Total affiliate revenues (lines 11 and 12)			
14 Total affiliate income from operations before income taxes			

EXPLANATORY—SCHEDULE F

Purpose. Schedule F is designed to facilitate an assessment of the effect on the carriers' profits of transactions with affiliates.

Affiliate transactions aggregating less than $30,000 need not be reported in this Schedule.

Study Carrier Groupings. A separate Schedule F shall be prepared for each of the following:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only)
3. All Study Carriers

Column (b). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (b)

shall be based on the 3rd calendar year preceding the filing year. If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (b) shall be based on the 2nd calendar year preceding the filing year.

Column (c). If the fare/charge increase is filed during the first six months of the calendar year, the data reported in column (c) shall be based on the 2nd calendar year prceding the filing year. If the fare/charge increase is filed during the last six months of the calendar year, the data reported in column (c) shall be based on the 1st calendar year preceding the filing year.

Column (d). Data to be reported in this column for the base year-actual shall be based on the 4-quarter calendar year periods identified below:

Filing month of verified statement	Four-quarter calendar year period ending
January	Sept. 30, preceding year.
February	Do.
March	Sept. 30, preceding year.
April	Dec. 31, preceding year.
May	Do.
June	Do
July	Mar. 31, filing-month year
August	Do.
September	Do.
October	June 30, filing-month year.
November	Do.
December	Do.

The 4-quarter calendar year periods identified above represent the minimum requirement. However, in event a proposed fare/charge increase is filed at a time when data for a more current quarter than that specified are obtainable, the more current may be used in the base year-actual. For example, if an increase is filed in late March and data for the 4th quarter of the preceding year is obtainable then the base year-actual ending December 31, may be used in lieu of the base year-actual ending September 30.

SCHEDULE G.—SELECTED STATISTICAL DATA

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All Study carriers

Line No. and Item (a)	Source (b)	1972 (c)	1973 (d)	1974 (e)	1975 (f)	1976 (g)	Cols. (h)–(l) (1977)–(1981) (h)
Operating revenues, expenses, and operating ratios:							
1 Passenger revenue	Sch. 2998, L. 1, col. (b)						
2 Special bus revenue	Sch. 2998, L. 2, col. (b)						
3 Express revenue	Sch. 2998, L. 5, col. (b)						
4 Total operating revenues	Sch. 2998, L. 9, col. (b)						
5 Total operating expenses	Sch. 2998, L. 15, col. (b)						
6 Operating ratio	Line 5÷line 4						
Carrier operating property:							
7 Structures	Sch. 1200, L. 2, col. (c)						
8 Revenue equipment	Sch. 1200, L. 3, col. (c)						
9 Improvements of leasehold property.	Sch. 1200, L. 8, col. (c)						
10 Total carrier operating property	Sch. 1200, L. 11, col. (c)						
Number and cost of buses:							
11 Number of buses acquired	Sch. 1221, L. 22, col. (c)						
12 Cost of buses acquired	Sch. 1221, L. 22, col. (d)						
13 Number of buses retired	Sch. 1221, L. 22, col. (e)						
14 Cost of buses retired	Sch. 1221, L. 22, col. (f)						
15 Average age of buses [1]	Sch. 1221, L. 22, col. (i)						
Employee compensation:							
16 Total daily basis	Sch. 9002, L. 20, col. (c)						
17 Total hourly basis	Sch. 9002, L. 21, col. (c)						
Man-hours or days paid for:							
18 Total—Daily basis	Sch. 9002, L. 20, col. (e)						
19 Total—Hourly basis	Sch. 9002, L. 21, col. (e)						
Revenue bus-miles operated:							
20 Intercity service (regular route).	Sch. 9002, L. 1, col. (e)						
21 Charter, sightseeing and other special service.	Sch. 9002, L. 3, col. (e)						

SCHEDULE G.—SELECTED STATISTICAL DATA—Continued

[Dollars in thousands]

( ) Greyhound Lines, Inc. ( ) Trailways combined ( ) All Study carriers

Line No. and Item (a)	Source (b)	1972 (c)	1973 (d)	1974 (e)	1975 (f)	1976 (g)	Cols. (h)-(l) (1977)-(1981) (h)
22 Vehicle miles operated exclusively in baggage, mail express, and/or newspaper service.	Sch. 9002, L. 4, col. (e)						
Revenue passengers carried:							
23 Number of intercity revenue passengers carried (regular route).	Sch. 9002, L. 6, col. (b)						
24 Total number of revenue passengers carried.	Sch. 9002, L. 9, col. (b)						
Other Statistics:							
25 Number of regulator route intercity passenger miles.	Sch. 9002, L. 12, col. (b)						
26 Total passenger revenue	Sch. 9002, L. 16, col. (b)						
27 Passenger-miles per bus mile (average load).	25÷L. 20						
28 Passenger-miles per passenger carried-intercity service (average journey).	25÷L. 23						

[1] *Line No. 15:* The weighted average age of buses for "All Study Carriers" is computed by:

(a) Calculating the average age of buses for each study carrier.

(b) Calculating the number of buses which each study carrier has on hand at the end of the year as a percentage of the total number of buses which all study carriers as a group have on hand at the end of the year.

(c) Multiplying the average age for each study carrier by that carrier's percentage of total buses on hand at the end of the year.

(d) Summing the result of calculation (c) above for each study carrier. The summation gives the weighted average age of buses for "All Study Carriers" taken together as a group.

EXPLANATORY—SCHEDULE G

Purpose. The purpose of Schedule G is to develop selected property, labor and operational data for use in evaluating the influence and relationship of these data to the income and other financial data contained in Schedules C through F. This schedule requires data commencing with the year 1972 through 1976, and thereafter, adding each calendar year's data until a 10-year moving period is reached. A ten-year time period is useful for analyzing the industry's operations during all phases of the business cycle.

Study Carrier Groupings. Schedule G shall be prepared for each of the following:

1. Greyhound Lines, Inc.
2. Trailways Combined (study carriers, only).
3. All Study Carriers.

Column (b). The annual report sources in this column refer to the 1976 Annual Report Form MP-1. For years prior or subsequent to 1976, use comparable sources.

Columns (c) through (g). These columns refer to successive calendar years from 1972 through 1976, each ending December 31.

Columns (h) to (l). These columns refer to successive calendar years which become applicable as the time period of record is expanded to the ultimate 10 year moving time period.

APPENDIX I TO SUBPART B

Excerpt from National Bus Traffic Association's brief (pages 18-23) in I&S M-29089 increased bus passenger fares and express/ rates-nationwide.

NBTA WILL UNDERTAKE THE DEVELOPMENT OF A COST ALLOCATION SYSTEM FOR MOTOR CARRIERS OF PASSENGERS

At the conclusion of the hearing in this proceeding, the Administrative Law Judge requested a discussion of the feasibility of NBTA undertaking the traffic and cost studies necessary to permit the separation of bus carrier expenses by types of service. As the record in this case indicates, no such studies have ever been undertaken and there is no present capability on the part of either the Commission or the carriers themselves to allocate total operating expenses by types of carrier service. As the testimony of Mr. Bilz reveals, data derived from traffic studies is the source of only a few of the factors which must be developed to permit

the indentification of cost.[18] Consequently, the development of a carefully conceived overall cost allocation system must be accomplished first, and then a determination must be made of the types and kinds of studies needed to develop the specific factors required for implementation to the system.

At its annual meeting held in Newton, Massachusetts, on September 27-28, 1976, the members of the National Bus Traffic Association considered the question of undertaking the analyses, planning, and studies leading to the development and implementation of a cost allocation system and agreed to undertake such a program. Mr. Bilz, the cost analyst retained by the Association, has been request to work with appropriate carrier personnel and an initial meeting to outline the first steps is scheduled to be held during November of this year. In the meantime, after consultation with Mr. Bilz, we set forth the following discussion of what will be involved.

In assessing the problems and complexities involved in formulating a procedure to develop costs by types of service for the bus lines, some parallels may be drawn with the procedure which has evolved over the years for general commodity motor carriers. Cost formulas for general commodity carriers were developed by the Cost Finding Section of the Interstate Commerce Commission more than thirty years ago. These cost formulas have been modified and refined from time-to-time in order to adjust for changing operating practices and conditions, improvements in accounting technology or the need to develop costs for particular kinds of service or types of traffic. At a later point in time when the need arose in general revenue increase cases for more detailed separations of the expenses of the general commodity carriers among types of service and types of traffic, procedures were developed whereby a continuing sample of traffic data could be developed to tie in with unit costs produced by the motor carrier cost formulas.[19] Thus, the detailed separation of traffic data developed in the continuing traffic studies was designed to tie in with existing cost allocation formulas. More recently, a complete revision of the Uniform System of Accounts for general commodity motor carriers necessitated further modification of the cost formulas; however, at the same time, such revisions served to increase the amount of expenses allocated in the formulas on a direct basis and reduced the amount of expenses which could only be allocated by means of factors derived from special studies or other means.

At the present time, the bus industry has committed itself to a review of its Uniform System of Accounts, jointly with the Bureau of Accounts of the Interstate Commerce Commission, to determine the need for revising the accounts to conform more closely with generally accepted accounting principles and, most importantly, to facilitate cost finding and financial analysis. In the review and analysis of the Uniform System of Accounts, consideration should be given to possible benefits from a matrix approach in accumulating operating expenses, similar in some respects but not necessarily as detailed as the approach used in redesigning the system of accounts for general commodity carriers. The separations of expenses for bus lines need not be as detailed as those made for general commodity carriers since the needs for expense segregations are not the same. However, use of a matrix system by the bus lines to accumulate operating expenses would result in the direct assignment of various categories of expense which would otherwise be included in a common pool of expense to be allocated on the basis of the best available data. Therefore, as a necessary preliminary step toward the development of a cost allocation system for the bus lines, the Uniform System of Accounts must be examined for the purpose of identifying expenses which can be directly assigned to particular services or operations.

Basically, a cost study for the bus lines involves, first, a determination of the expenses chargeable to each of the various services provided by the carriers. These services include regular route intercity service, involving transportation of passengers, express, baggage, newspapers and mail, local service and special services including charter operations and tours. Secondly, the need for further separations within these categories must be explored. An all-out study would involve the allocation of expenses for regular route service among passengers and their baggage, express traffic and all other traffic; however, such detailed separations—which can only be made by means of specially-designed allocating procedures and special studies—may not be necessary, at least in the initial design of a cost allocation system for the bus lines. From the standpoint of current and potential use to be made of cost study data, it is reasonable, at this point, to design a system which will separate expenses for regular route service involving passenger and express traffic (including baggage) on the one hand, and all other services on the other. Finally, an additional separation of the expenses for regular route service between interstate and intrastate traffic is necessary.

[18]Tr. 183-186.

[19]Probability sampling of general freight motor carrier traffic did not develop until some 20 years after the Commission's cost formulas for truck lines.

In connection with the first step, i.e., allocation of expenses among services, although a number of the various categories of expense incurred by the bus lines may be directly allocated to various services, there are additional items of expense which are jointly incurred in connection with two or more services and can only be separated among services on the basis of appropriate allocation factors. The same problems arise in the second and third steps, to an even greater extent, in determining the extent to which expenses assigned to a particular service must be allocated among the various types of traffic handled in that service and in making the further separation between interstate and intrastate traffic. These separations should be made by means of cost allocation factors which are functionally related to the fullest extent possible to each item of expense. This calls for the development of additional allocation factors which are not presently maintained by the bus lines.

At the present time, the carriers can accurately determine from their regularly maintained accounting records the amount of revenue accruing from regular route operations, separately for passenger and express service, and from operations in connection with charter and special service. By means of established probability sampling procedures, Greyhound and Continental Trailways can further separate passenger revenue in intercity service between interstate and intrastate traffic. Other carriers are able to make the latter separation of revenue on various bases consistent with the size of their operations. It is possible that the probability sampling procedure and other bases employed by the smaller carriers may be expanded to include statistical data as well as revenue information. The bus lines currently maintain records, for the purpose of their annual reports to the Interstate Commerce Commission, of the number of bus miles operated separately for intercity service, local service and special services. Such data will undoubtedly come into use in allocating expenses among services. Similarly, records of the number of passengers carried in various services, maintained by the bus lines, may be used in some of the expense allocations. However, no continuing records are maintained showing the number of passengers carried separately in interstate and intrastate commerce nor are any separations made of the number of passenger miles in each category. Such statistical separations are required regardless of the methodology followed in the cost study, that is, whether the separations of expenses between interstate and intrastate traffic are made within the framework of a cost allocation formula or whether the expenses in each category are developed on the basis of average mileage-related and non-mileage unit costs developed from a cost formula and applied to traffic service units developed for interstate and intrastate traffic, i.e., number of passengers and number of passenger miles.

As noted above, expenses for each type of traffic must be separated between those which are related to mileage operated and those which are not related to mileage. This brings in the problem of segregating the terminal activities of the carriers among services and types of traffic. Segregation of such expenses will probably require time and motion analyses, calculation of space utilization factors at various representative terminals and other special studies.

The formulation of a cost allocation system and the gathering of input data for the system will require an extensive amount of work and expense on the part of the bus lines. If the amount of time required in developing acceptable cost allocation procedures for general freight motor carriers is any indication, several years may be required before a cost system for the bus lines can be formulated, applied and tested. The bus industry recognizes that, because of its workload and limited staff, the Cost Finding Section of the Commission cannot take on the task of developing a cost allocation system for the bus lines as it did in connection with general freight motor carriers; however, it is hoped that the efforts of the bus lines in this regard will receive the full support and guidance of the Commission's staff so that the best possible results may be achieved in the shortest possible time.

H. G. HOMME,
Secretary.

PART 1105—PROCEDURES TO BE FOLLOWED IN RAIL AND MOTOR COMMUTATION OR SUBURBAN PASSENGER FARE INCREASES

Sec.

1105.1 Filing of tariff schedules and verified statements.
1105.2 Service of verified statements on the Commission.
1105.3 Service of verified statements on the public.
1105.4 Certification of service of notice.
1105.5 Verification of statements.

AUTHORITY: (49 U.S.C. 6, 13, 15(7), 17(3), 305(e), 316(e), 316(g), 316(i), 317(a), 317(c); 5 U.S.C. 533(b))

SOURCE: 40 FR 26035, June 20, 1975, unless otherwise noted.

§ 1105.1 Filing of tariff schedules and verified statements.

Upon the filing of tariff schedules containing proposed increases in rail and motor commutation or suburban passenger fares, the carrier shall concurrently therewith, file and serve as provided herein, verified statements presenting and comprising the full and entire evidentiary case relied on in support of the proposed increase. These statements will be considered as submitted in evidence as basis for a decision by the Commission on the merits of the issues.

§ 1105.2 Service of verified statements on the Commission.

The original and 24 copies of each such verified statement for the use of the Commission shall be sent to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. One copy of each statement shall be sent by first-class mail to each of the regional and district offices of the Commission in States served by the carrier and affected by the proposal, where it will be open to public inspection.

§ 1105.3 Service of verified statements on the public.

Concurrently with the filing of the tariff schedules and verified statements on the Commission, a copy of each shall be mailed by first-class mail to the Governor and the State's agency responsible for such matters, and to county transportation agencies—where existent, in States and counties served by the carrier and affected by the proposal. The fact thereof shall be evidenced by a certificate of service filed with the petition.

§ 1105.4 Certification of service of notice.

The carrier will certify that it has furnished notice of the fare increase proposal in accordance with the requirements of part 1303.34(j) or 1306.6(e), as applicable.

§ 1105.5 Verification of statements.

Each verified statement shall be signed in ink by the affiant and verified (notarized) in the manner provided by Rule 50 and Form No. 6 of the Commission's General Rules of Practice. The post office address of the affiant or his counsel shall be shown. The provisions in this part supersede the provisions of the General Rules of Practice, Part 1100 of this chapter, to the extent inconsistent therewith.

PART 1106—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975

Sec.

1106.1 Purpose and scope.
1106.2 Authority.
1106.3 Definitions.
1106.4 Policy.
1106.5 Identification of major regulatory actions.
1106.6 Preparation of statements of energy impact .
1106.7 Reporting requirements.
1106.8 Decisions.

AUTHORITY: 382(b) Energy Policy and Conservation Act, 1975.

SOURCE: 43 FR 29948, July 12, 1978, unless otherwise noted.

§ 1106.1 Purpose and scope.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., after this referred to as EPACA) directs and authorizes that certain steps be taken by the Federal and State governments to reduce demand for energy, increase domestic energy supplies, and conserve existing energy supplies through energy conservation programs and improvements in the energy efficiencies of motor vehicles and other consumer products. Efforts should also be made to increase the energy efficiency of all modes of surface transportation subject to Commission regulation.

(b) These regulations establish procedures under which the Commission discharges its duties under the Energy Policy and Conservation Act of 1975. They apply to all proceedings before the Commission.

§ 1106.2 Authority.

(a) Section 382 of EPACA requires the Commission to examine its policies and programs in order to institute measures to reduce energy consumption by persons subject to its regulation. Section 382(b) of the EPACA directs the Commission to include in any

major regulatory action, where practicable and consistent with the exercise of its authority under other law, a statement of the probable impact of the major regulatory action on energy efficiency and energy conservation. The statute directs the Commission to define the term "major regulatory action" by rule.

(b) Sections 17(3), 204(a)(6), 304(a), and 403(a) of the Interstate Commerce Act authorize the Commission, consistent with the purpose of the act, to establish rules and procedures which are necessary to the exercise of its functions.

§ 1106.3 Definitions.

(a) "Act" means the Interstate Commerce Act, as amended.

(b) "Application" includes a request by an applicant, complainant, or proponent seeking any right, privilege, authority, or relief under or from any provision of the act, any regulation or requirement made under a power granted by the act, or any other statute conferring jurisdiction upon the Commission.

(c) "Commission" means the Interstate Commerce Commission or decisional unit within the Interstate Commerce Commission.

(d) "EPACA" means the Energy Policy and Conservation Act of 1975.

(e) "Major regulatory action" is any action listed in § 1106.5(a) below or any other activity undertaken, approved, or licensed by the Commission which has the potential for a major impact on the conservation of energy resources or upon energy efficiency or which may have a broad effect on the operations of the surface transportation industry.

(f) "Statement of Energy Impact" (SEI) is a statement included in Commission decisions which describes the probable impact of a major regulatory action on energy conservation or energy efficiency.

§ 1106.4 Policy.

(a) The Commission's policy is to implement EPACA to the fullest extent possible consistent with its existing statutory authority. The goals of furthering energy conservation and energy efficiency are integral parts of the Commission's overall regulatory mandate. Energy considerations are weighed with other relevant considerations in determining whether a proposal is consistent with the public interest or required by the public convenience and necessity.

(b) Energy findings and conclusions are integrated into decisions or legislative proposals involving a major regulatory action as defined in this part. The Commission interprets the provisions of EPACA as supplemental to its existing authority and as a mandate to view traditional policies and missions in the light of national energy objectives and, if necessary, to change these policies or to seek legislation to promote greater energy conservation and efficiency among the carriers subject to Commission jurisdiction.

(c) These procedures apply only to proceedings started after the effective date of these regulations.

§ 1106.5 Identification of major regulatory actions.

(a) The following classes of actions are major regulatory actions and require preparation of an SEI:

(1) Construction of rail lines (except for connecting tracks);

(2) Merger, control, or consolidations involving two or more class I railroads;

(3) Commuter fair adjustments filed under 49 CFR 1105.1;

(4) Intercity bus fare adjustments filed under 49 CFR 1104.20;

(5) Passenger train discontinuance;

(6) Revocation or substantial modification of motor carrier regular-route passenger service;

(7) Abandonment of rail lines;

(8) Certification of water carrier service;

(9) Rulemaking and legislative proposals affecting carrier operations; and

(10) General rate adjustments filed under 49 CFR 1102.1 and 1104.1, as well as similar adjustments affecting modes of transportation not specifically referred to in those parts.

(b) While other commission proceedings may have some energy impact, these impacts are generally not considered to be major. However, if the Commission on its own initiative identifies

energy issues of consequence in a proposed action not listed in subparagraph (a) of this section, or if evidence is presented to the Commission indicating that this action may have important energy impacts, an SEI may be prepared.

(c) In determining whether a proposed action not listed in subparagraph (a) of this section constitutes a major regulatory action, consideration will be given to whether the action will:

(1) Substantially increase or decrease energy consumption in comparison with existing energy consumption in the affected area;

(2) Result in substantial diversion of traffic from one mode of transportation to another;

(3) Result in materially more energy efficient or less energy efficient use of existing modes of transportation;

(4) Be consistent with Federal, State, and local plans regarding energy conservation;

(5) Result in material disruption of existing patterns of energy distribution; or

(6) Provide or remove necessary transportation access for the substantial development of energy resources.

§ 1106.6 Preparation of statements of energy impact.

(a) The Commission will prepare the statement of energy impact for all major regulatory actions and include it in the decision or the legislative proposal.

(b) If a proceeding is not investigated by the Commission, a statement of energy impact will not be prepared.

(c) A determination that a proceeding is a major regulatory action within the meaning of EPACA and this part is independent from any determination that the proceeding is a ––major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969, and vice versa.

§ 1106.7 Reporting requirements.

(a) Every application within § 1106.5(a) shall include information specifically addressing all factors listed in § 1106.5(c) except number (4) and shall provide supporting data to the extent practicable.

(b) For other proceedings before the Commission, the information required in subparagraph (a) of this section shall be provided as follows: (1) In proceedings involving oral hearings, at these hearings, at the control of the presiding officer; and (2) in proceedings not involving oral hearings, at the time verified statements or other materials in justification of an application are filed.

(c) These reporting requirements shall not apply to applications for temporary or emergency temporary authority or to other emergency situations where compliance would be impracticable.

(d) Persons filing a protest or other pleading in a proceeding before the Commission may include a statement indicating the probable impact of the proposed action on energy conservation and energy efficiency. A statement alleging that a proposal is a major regulatory action under EPACA and this part shall be accompanied by supporting data, to the extent practicable, indicating the nature and degree of the anticipated energy impact.

§ 1106.8 Decisions.

In addition to the statement of energy impact the decision in a major regulatory action will include findings and conclusions indicating how the energy impacts identified in the SEI were considered in the decision.

PART 1107—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD RATE ADJUSTMENT ACT OF 1973

Sec.

1107.1 Requirements.
1107.2 Notice.
1107.3 Commission order.

APPENDIX

AUTHORITY: Pub. L. 93-69. Railroad Rate Adjustment Act of 1973, 87 Stat. 162 (49 U.S.C. 15a(4)(a)).

SOURCE: 38 FR 20623, Aug. 2, 1973, unless otherwise noted.

§ 1107.1 Requirements.

Petition or petitions filed by class-I line-haul railroads and other common carriers subject to part I of the Interstate Commerce Act under the provisions of subsection (4)(a) of section 15a of the act, for adjustment of their interstate freight rates when increases in the expenses of such carriers have or will result from any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as the result of the enactment of the Railroad Retirement Amendments of 1973, shall be verified and shall disclose: [1]

(a) The amount of increases in expenses of such carriers resulting from any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973, by showing—

(1) For each of the four calendar quarters ending with the latest quarter preceding the filing date of the petition—

(i) The mid-month number of employees,

(ii) The total service hours by operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iii) The total compensation paid for operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iv) The total compensation subject to retirement taxes,

(v) The retirement taxes paid,

(vi) The retirement tax rate,

(vii) The retirement taxes reimbursed by AMTRAK and other public authorities.

(2) For the third and fourth quarters of 1973 and for each quarter of 1974—

(i) The estimated mid-month number of employees,

(ii) The estimated total service hours by operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iii) The estimated total compensation paid for operating and other employees, as reported in ICC wage statistics, Forms A and B,

(iv) The estimated total compensation to be subject to retirement taxes,

(v) Estimated retirement taxes to be paid,

(vi) Estimated retirement tax rates,

(vii) The estimated retirement taxes to be reimbursed by AMTRAK and other public authorities and, in addition,

(viii) The estimated dollar amount of tax increases resulting from the increased tax rates.

(b) The dollar amount of increased freight rates needed by showing—

(1) For each of the four calendar quarters ending with the latest quarter preceding the filing date of the petition—

(i) The freight revenue ton miles,

(ii) The freight revenues.

(2) For the second and third quarters of 1973 and each quarter of 1974—

(i) The estimated freight revenue ton miles,

(ii) The estimated freight revenue based on rate levels in effect at the time of the filing of the petition, and

(iii) The estimated freight revenues to be obtained from the increases proposed, including the effect on the movement of the traffic.

(c) Specify proposed rate holddowns and exemptions by individual roads and districts with reasons for such exceptions and effect on estimated freight revenues.

(d) The availability of means other than a rate increase by which carriers might absorb or offset such increases in expenses, identifying the means considered.

[38 FR 20623, Aug. 2, 1973, as amended at 38 FR 22125, Aug. 16, 1973]

[1] The data furnished should be individually by carrier, summarized by district, and nationwide; the methods used to derive the estimates must be reflected, including assumptions used; and all underlying work papers must be made available to the Commission upon request.

§ 1107.2 Notice.

Notice of the filing of such a petition will be given to the general public by publication of such a notice in the FEDERAL REGISTER.

§ 1107.3 Commission order.

Upon consideration of the evidence presented in such a verified petition, and in accordance with the provisions of subsection (4)(b) of section 15a, within 30 days of the filing of the petition, the Commission shall issue an order (a) permitting the establishment of interim increases in the general level of the interstate rates in an amount approximating that needed to offset the increases in expenses attributable to the increases in taxes referred to above, (b) requiring the publication in the tariffs establishing the interim increase of a rule requiring the carriers to pay refunds, with interest at the rate of 4 percent per annum, to the extent that the increase ultimately approved under the provisions of subsection (4)(c) of section 15a is less than that approved on an interim basis, (c) requiring publication of the said order in the FEDERAL REGISTER, and (d) providing for notification to this Commission by all persons who are interested in participating in the subsequent hearings to be held under the provisions of subsection (4)(c) of section 15a.

APPENDIX

VERIFIED STATEMENTS

Railroad respondents
Institute of Scrap Iron and Steel
Puget Sound Traffic Association
Southern Hardwood Traffic Association and Associated Cooperage Industries of America, Inc., jointly
Western Wood Products Association, California Redwood Association, Western Wood Preservers Institute, and Western Plywood Manufacturers' Traffic Conference, jointly
Swift & Company and Swift Chemical Company, jointly
Glass Container Manufacturers Institute, Inc.

STATEMENT OF VIEWS

The National Industrial Traffic League
Carolina Power & Light Company, Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, jointly
Consumers Power Company
General Mills, Inc.
Producers Grain Corporation
Pacific Northwest Traffic League
Weyerhaeuser Company
California Grape & Tree Fruit League
Monsanto Company
Roberta Simons
Canners League of California

PART 1108—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.
1108.1 Purpose.
1108.2 Responsibility for administration of the Commission's NEPA rules.
1108.3 Information and assistance.
1108.4 Definitions.
1108.5 Determinative criteria.
1108.6 Classification of actions.
1108.7 Reporting requirements.
1108.8 Scoping.
1108.9 Timing, comments, and Commission action.
1108.10 Commission procedures and public involvement.
1108.11 Effect of rules.

AUTHORITY: 42 U.S.C. 4332, 49 U.S.C. 10321, 5 U.S.C. 553.

SOURCE: 45 FR 79813, Dec. 2, 1980, unless otherwise noted.

§ 1108.1 Purpose.

These rules implement section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and are designed to assure adequate consideration of environmental factors throughout the decisionmaking process.

§ 1108.2 Responsibility for administration of the Commission's NEPA rules.

The Director of the Office of Policy and Analysis is responsible for administration of the Commission's NEPA rules and for the preparation of environmental documents required under such rules.

§ 1108.3 Information and assistance.

Information, including the status of studies, the availability of reference materials, as well as informal interpretations of the Commission's NEPA process and other forms of assistance will be made available upon request to: Energy and Environment Branch (Room 5377), Office of Policy and Analysis, Interstate Commerce Commission, 12th & Constitution Ave.

NW., Washington, D.C. 20423, Telephone: 202-275-7916.

§ 1108.4 Definitions.

In addition to those definitions contained in the Council on Environmental Quality's Regulations (40 CFR 1508), the following definitions apply to the Commission's NEPA process:

(a) "Act" means the Interstate Commerce Act, Subtitle IV of Title 49, United States Code, as amended.

(b) "Assessment" means a concise public document for which the Commission is responsible, that serves:

(1) Briefly to provide sufficient information for determining whether to prepare an environmental impact statement or to make a finding of no significant impact; and

(2) To facilitate preparation of an environmental impact statement when one is necessary.

(c) "Commission" means the Interstate Commerce Commission.

(d) "Environmental Impact Statement" (EIS) means a detailed written statement as required by section 102(2)(c) of NEPA.

(e) "Finding of No Significant Impact" is a document issued by the Commission briefly presenting the reasons why an action not categorically excluded will not have a significant effect on the quality of the human environment and for which an environmental impact statement therefore will not be prepared.

(f) "Environmental Report" or "report" means an analytical document which briefly evaluates the environmental impacts of a proposed action and alternatives. It is to be filed by an applicant with the Commission pursuant to the requirements of this part.

§ 1108.5 Determinative criteria.

In determining whether a "major Federal action," as that term is defined at 40 CFR 1508, has the potential to affect significantly the quality of the human environment, the Commission will be guided by the definition of "significantly" at 40 CFR 1508.

§ 1108.6 Classification of actions.

(a) Rail line construction is a class of action that has the potential for significant environmental impact and will normally require an Environmental Impact Statement (EIS).

(b) The following classes of action may involve significant envrionmental impacts, but normally will be addressed in an environmental assessment:

(1) Abandonment, acquisition, or operation of a line of railroad;

(2) Railroad merger, control, or consolidation proceedings;

(3) Discontinuance of passenger trains;

(4) Individual and general freight rate proceedings involving recyclable commodities;

(5) Commutation or suburban passenger fare increases, but only if the proposed increase, when considered together with other increases over the previous 3 years, exceeds by 30 percent (on a compounded basis) the combined inflation rate (as measured by the Consumer Price Index) for those years; and

(6) Legislative proposals, policymakings, and rulemaking proposals affecting carrier operations.

(c) Environmental impacts associated with the following classes of action are insignificant (or ascertainable under other reporting requirements) and, therefore, environmental reports and documentation normally need not be prepared under this part:

(1) Interpretation of operating rights and tariffs;

(2) Proceedings involving only a change in ownership or similar changes, such as issuance of securities or reorganization, but not involving a change in carrier operations including overall levels of employment;

(3) Individual and general freight rate proceedings except to the extent recyclable commodities are involved;

(4) Motor and water carrier, broker, and freight forwarder licensing;

(5) Intercity bus fare adjustments;

(6) Revocation or substantial modification of motor carrier service; and

(7) Applications for common use of rail terminals and trackage rights proceedings.

(d) The classifications established in paragraphs (a), (b), and (c) of this section are not invariable and, where circumstances warrant, the Commission,

on its own initiative or upon request, may reclassify, waive or otherwise modify requirements with respect to any proposed action. Where an action categorically excluded from environmental analysis may have significant environmental impacts, an assessment or an EIS may be prepared.

§ 1108.7 Reporting requirements.

(a) Each applicant initiating one or more of the classes of action identified in § 1108.6 (a) or (b) must submit with its application an Environmental Report as provided in paragraph (c) of this section which will form the basis of any environmental document. Where it is determined that a report should be prepared by an applicant in a categorically excluded proceeding, the applicant will be notified separately and shall submit a report within time limits established in the notification.

(b) Where information required by this part is otherwise included in applicant's pleadings, it may be incorporated by reference into the Environmental Report.

(c) Each Environmental Report shall respond completely to the following questions relative to the proposed action, to the extent applicable. If a question is inapplicable, so state.

(1) *Alternatives.* Have alternatives to the proposed action (*e.g.*, no action or partial approval) been considered? If so, summarize the major environmental impacts associated with each alternative.

(2) *Transportation System.* (i) Will existing regional or local transportation systems or patterns be substantially affected? If so, describe the effects. (ii) Will traffic (passengers or freight) be diverted to other transportation modes or systems? If so, quantify the extent of expected diversion.

(3) *Land Use.* (i) Is the proposed action consistent with regional and/or local land use plans (Local and/or regional planning agencies should be consulted in this regard)? If not, describe any inconsistency. (ii) Is a designated Coastal Zone Management area involved? If so, is the proposed action consistent with the affected State's Coastal Zone Management program?

(iii) Are designated wetlands or 100-year flood plains affected? If so, describe the effects. (iv) Are prime agricultural lands, as designated by the Soil Conservation Service, affected? If so, describe the effects.

(4) *Energy.* (i) Will the development of transportation of energy resources be affected? If so, describe the effects.

(ii) Will the movement and/or recovery of recyclable commodities be affected? If so, describe the effects.

(iii) Will the proposed action cause diversion of traffic from rail to motor carriers in excess of (A) 1,000 rail carloads per year or (B) an average of 50 rail carloads per mile per year for all or any part of an affected rail line? If so, quantify the net change in energy consumption as a result of diversion, providing commodity, tonnage, and carload data by station where only part of an affected rail line is involved.

(5) *Air.* Will the proposed action result in (i) a minimum increase in rail traffic of 50 percent or three trains per day on an affected rail line, (ii) an increase in rail yard activity of 20 percent as measured in carload activity or (iii) an increase in motor carrier traffic of either 50 vehicles per day or an increase in truck traffic exceeding 10 percent of the average daily traffic on a given highway segment? If any of the enumerated thresholds is exceeded, quantify the anticipated increase in air emissions. If a class I or nonattainment area is affected, are increased emissions within parameters of the affected State Implementation Plan?

(6) *Noise.* If any of the thresholds identified in item (5) is surpassed, will the proposed action cause an increase in noise levels exceeding either (i) a four decibel incremental increase or (ii) 65 decibels (Utilize the Leg method or its equivalent in Ldn. See *e.g.*, U.S. Environmental Protection Agency, Protective Noise Levels (Nov. 1978))? If so, are sensitive receptors (*e.g.*, schools, libraries, and hospitals) in the affected area? If so, how much above existing or ambient conditions will noise increase for senstive receptors?

(7) *Safety.* Will public health or safety (including vehicle delay time at railroad grade crossings) be affected? If so, describe the effects.

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(8) *Wildlife.* (i) Will endangered or threatened species be affected or will critical habitats be destroyed or modified (usually considered only in the context of construction and abandonment proceedings for which applicant should consult with the Fish and Wildlife Service or the Marine Fisheries Service)? If so, describe the effects.

(ii) Will wildlife sanctuaries or refuges, National of State parks or forests be affected? If so, identify each affected site and describe the impacts.

(9) *Water.* (i) Is the proposed action consistent with applicable Federal, State and/or local water quality standards (usually considered only in the context of rail line construction applications and abandonments which will require in-stream salvage operations)? If not, describe any inconsistency.

(ii) Will permits under sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344) be required? If so, have permits been sought or issued?

(10) *Historic.* (i) Are sites or structures listed in the *National Register of Historic Places* affected? If so, describe the effects.

(ii) Will sites or structures 50 years old or older be affected? If so, and such sites or structures are not listed in the *National Register of Historic Places,* applicant would submit, at the earliest possible juncture, a description of the line, including a map, as well as photographs and descriptions of such structures to the appropriate State Historic Preservation Office for review and include a copy of the cover letter in the Environmental Report.

(iii) Will culturally significant locations, archaeological sites, or unique land forms be affected (usually considered only in the context of rail line construction applications)? If so, applicant should consult with the involved State Historic Preservation Office.

(11) *Additional Reporting Requirements for Rail Line Construction Cases Only.* In addition to the reporting requirements enumerated above, the following information (which is not necessarily all-inclusive) should be included in Environmental Reports submitted for rail line construction applications:

(i) A description of the proposed route corridor and line location by State, county, and subdivision with a plan view at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map) showing the relationship to the existing transportation network including the location of all highway and road crossings together with right-of-way requirements according to ownership and land use type.

(ii) A description of alternative route corridors considered by the applicant together with a statement of reasons for not selecting such corridors.

(iii) A description of construction plans including labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) A description of operations to be conducted upon project completion including freight to be transported, the annual number of train movements and types of cars, motive power requirements, estimated labor force, and proposed maintenance-of-way practices.

(v) A description of the effects, including indirect or down-line impacts, resulting from new or diverted traffic operating over the new line.

(vi) A description of effects, including impacts on essential public services (*e.g.,* fire, police, ambulance, neighborhood schools, et cetera) for communities traversed by the proposed line.

(vii) A discussion of societal impacts including expected change in employment both during and after construction, and the expected net change in annual salaries and wages by county for those counties which will experience a net change of 50 or more employees.

(viii) A description and assessment of the impacts associated with the construction period and a description of mitigation measures planned to minimize each adverse impact.

(d) Where thresholds identified in (c) above are exceeded or where the proposed action otherwise may cause materially adverse impacts, the report should consider and describe appropriate mitigating measures.

(e) Submission of materials and information called for by this part shall not preclude the Energy and Environment Branch from requiring addition-

al pertinent information necessary to make a determination of the proposed action's environmental significance.

(f) The Commission, on its own initiative or upon request, may waive or modify, in whole or part, the provisions of this section. Waiver generally is appropriate where it can be shown that materially adverse environmental impacts will not flow from a proposed action or where other circumstances are present under which the filing of an Environmental Report would constitute an unreasonable burden.

§ 1108.8 Scoping.

(a) Scoping is normally employed in actions for which an EIS is prepared (1) to identify environmental issues which should be treated and (2) to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly. Where the Commission is preparing an EIS in cooperation with other agencies, the scoping process may be used to allocate responsibility for the preparation of parts of the EIS among lead and cooperating agencies. If, in preparing an environmental assessment, it becomes apparent that the proposed action has the potential to affect significantly the quality of the human environment, the scoping process generally will be engaged.

(b) Scoping generally will be accomplished through written submissions. The notice of intent to prepare an environmental impact statement normally will include a preliminary outline of the scope of the study to be conducted. Written comments addressing the proposed scope will be invited. All comments received will be considered before a final scoping plan for the environmental study is formulated and published. Where appropriate (typically where issues are complex and in dispute) scoping may take place at a meeting which will be open to interested agencies, parties, and the public.

§ 1108.9 Timing, comments, and Commission action.

(a) Applicants are encouraged to consult with the Energy and Environment Branch for guidance at the earliest possible time prior to instituting a formal proceeding.

(b) If construction and operation of a rail line is contemplated, the prospective applicant is required to notify the Energy and Environment Branch of its intention before beginning work on its Environmental Report, but at least 6 months prior to the date its application is to be filed.

(c) Written comments on a draft EIS will normally be accepted during the 45-day period following service of the draft EIS.

(d) Where oral hearings are to be held in a proceeding for which an EIS has been prepared, the draft EIS will normally be made available to the public at least 15 days prior to any portion of the hearing relating to the EIS.

(e) To the maximum extent practicable, no decision will be made on the merits of an application for at least 90 days following service of the draft EIS and 30 days following service of the final EIS.

(f) The Commission, on its own initiative or upon request, may waive or modify the provisions of this section relative to timing, comments, and Commission action.

§ 1108.10 Commission procedures and public involvement.

(a) All Environmental Reports and related material will be analyzed independently by the Energy and Environment Branch at the earliest opportunity and environmental documentation, as necessary, will be prepared. All environmental documentation will be made available to parties and the public.

(b) A Notice of Intent to prepare an EIS will be published in the FEDERAL REGISTER upon a determination that a proposed major action has the potential for significant environmental impacts. The notice may include a preliminary scope of the environmental study.

(c) Completion of both draft and final EIS's will be announced to the public through a Notice of Availability published (normally by the Environmental Protection Agency) in the FEDERAL REGISTER. A Notice of Availability of a draft EIS will invite comments and fix the commenting period. Copies

of draft and final EIS's will be served on all parties to the proceeding who have filed an Environmental Report, on Federal agencies with jurisdiction by law or special expertise, and as otherwise appropriate. All other parties will receive by mail a notification that the draft or final EIS has been prepared. These parties and other interested persons may obtain copies of the draft or final EIS upon request made to the Commission's Energy and Environmental Branch.

(d) Comments on a draft EIS will be considered by the Branch. In response to comments any one or more of the following measures may be taken:

(1) Modify findings with respect to alternatives including the proposed action;

(2) Develop and evaluate alternatives of merit not previously given serious consideration;

(3) Supplement, improve, or modify the statement as relevant;

(4) Make factual corrections;

(5) Explain why comments do not warrant further response;

(6) Take such other action as may be necessary consistent with the basic purposes of NEPA and relevant authorities.

(e) If an EIS is supplemented, notice and comment procedures outlined above will be followed to the extent practicable.

(f) Other environmental documents (*e.g.*, Environmental Assessments and Findings of No Significant Impact) will be made available to the public.

(g)(1) A Finding of No Significant Impact or an Assessment prepared for an action in which formal adjudicative proceedings are ordered will be made available through notice which will be served on parties of record and published in the FEDERAL REGISTER and/or published in newspapers in the affected area. The notice will invite comments and fix the commenting period.

(2) Comments on a Finding of No Significant Impact or an Assessment will be considered by the Energy and Environment Branch. If warranted, any one or more of the measures outlined in paragraph (d) of this section may be taken in response to comments on Findings of No Significant Impact or Assessments. In addition, if major issues suggesting significant environmental impacts were overlooked, further evaluation in the form of an EIS may be recommended.

(h) Commission staff responsible for preparing an environmental document shall be subject to cross-examination on the contents of the draft document only where good cause is shown. Good cause contemplates, among other things, a showing that normal written commenting procedures are inadequate.

(i) All final environmental documents including supplements together with comments and responses, if any, and other relevant material will become part of the record of the proceeding, including formal rulemaking and adjudicatory proceedings. The documents shall accompany the proposal through the existing agency review processes.

(j) The decisionmaker will consider the range of alternatives discussed in environmental documents.

§ 1108.11 Effect of rules.

These rules repeal the reporting requirements contained in 49 CFR 1106 for those classes of action described in § 1106.5(a) (1), (2), (5), (7), and (9). The reporting requirements contained in 49 CFR 1106 are repealed for that class of action described in § 1106.5(a)(3) only to the extent that the threshold specified in 49 CFR 1108.6(b)(5) is exceeded.

PART 1109—REQUIREMENTS AND PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Sec.

1109.5 Expeditious handling of divisions of revenue cases.
1109.15 Expeditious procedures for publication of separate rates for distinct services.

§ 1109.5 Expeditious handling of divisions of revenue cases.

(a) Prior to: (1) The filing of a notice of intent to file a complaint or (2) The filing of a formal complaint in a divisions case, it must be shown that the complainant or prospective complainant, during the 6-month period imme-

diately prior to filing, willingly sought to negotiate the divisions arrangement in issue but failed, and as proof thereof such party must submit to the Commission a verified statement summarizing the negotiations.

Failure to submit such a verified statement may result in dismissal of a notice of intent to file a complaint or denial of a formal complaint. Any part of the 6-month period may be waived by the Commission on motion of the complainant or prospective complainant if it can be shown that other parties to a divisional dispute have failed to meet and conduct meaningful negotiations with the complainant or prospective complainant.

(b) The original of each notice of intent to file a formal complaint or amendment thereto must be accompanied by copies in sufficient number to enable the Commission to serve one upon each party, including when bankrupt lines are involved each receiver or trustee, and retain six copies in addition to the original. The Commission will serve notices of intent to file formal complaints and amended notices thereof in the same manner as provided for service of formal complaints under rule 34 of the Commission's general rules of practice.

(c) The notice of intent to file a complaint shall specify in general terms, subject to modification as the evidence is developed: (1) The traffic and joint rates concerning which an adjustment of divisions is sought; (2) The territorial scope of the traffic involved; (3) The railroads which participate in such joint rates; and (4) The present and proposed divisional bases.

(d) The party filing a notice of intent shall: (1) Indicate when the filing of a formal complaint is contemplated, (2) Exercise due diligence to meet such filing date, and (3) File a formal complaint within a reasonable period of time after the filing of a notice of intent. In no event shall the filing of a formal complaint be greater than 18 months after the filing of a notice of intent unless the Commission shall first order extension of time upon good cause shown.

(e) The party filing a notice of intent shall every 3 months, with copies to potential defendants, advise the Commission of the anticipated date for the filing of a formal complaint. Letter replies by potential defendants will be permitted. Repeated postponements of the anticipated date for filing a formal complaint may establish a lack of due diligence and in that event the Commission may enter an order dismissing the notice of intent to file a complaint.

(f) A party served with a notice of intent to file a formal complaint shall within 30 days of such notice advise the Commission in the manner set forth in paragraph (b) of this section of its intent to file a cross complaint. If a party served with a notice to file a formal complaint does not intend to file a cross complaint no action under this rule need be taken.

(g) Notice of intent to file cross complaints shall be subject to the same rules applicable to notice to file a formal complaint.

(h) Cross complaints shall be subject to the same rules applicable to formal complaints.

(i) Notice of intent to file a cross complaint shall be consolidated with a notice to file a complaint. The cross complaint must be filed within 30 days of the filing of the formal complaint. Failure to submit the cross complaint when due shall result in its dismissal and the affirmative relief sought may not be reinstituted until after the pending formal complaint is decided.

(j) Discovery should be utilized to assemble evidence of the type referred to in the Appendix hereto.

(1) A party filing a notice of intent to file a complaint shall be accorded the right of discovery applicable to orally heard cases. The same right of discovery shall be accorded the opposing party, provided that the opposing party has notified the Commission within 30 days of being served with the notice of intent to file a complaint that it intends to exercise its right of discovery.

(2) Parties to a formal complaint instituted after the notice of intent to file a complaint procedure has been followed, may upon petition and demonstration of good cause and order by the Commission exercise their rights of discovery.

(3) If a formal complaint is filed by a party that did not utilize the notice of intent to file procedures, the right of discovery shall only be granted to the opposing party. This right may be exercised by the opposing party within 6 months of the filing of the complaint.

(k) Joint traffic studies shall be conducted under the "notice of intent to file a complaint" procedure in those instances where the opposing party has either notified the Commission of its intent: (1) To file a cross complaint or (2) To exercise its right of discovery. A joint study of the traffic in issue shall commence 30 days after either of the above options has been elected and shall be completed within 6 months, unless otherwise ordered by the Commission.

(l) Cost studies shall be prepared individually by the parties, and shall be completed within 6 months after the preparation of the joint traffic study, unless otherwise ordered by the Commission. Absent a more reliable method, the cost studies should be developed in accordance with Rail Form A properly adjusted to reflect the characteristics of the traffic in issue in accordance with the guidelines suggested in the appendix hereto and properly updated to a current level. However, other methods of cost allocation may also be used to the extent that more accurate or reliable cost data results.

(m) Special studies shall be governed by the following procedure:

(1) Within 30 days of the commencement of the cost study set forth in paragraph (l) of this section, a party desiring to conduct a special study shall notify the party on the other side of the controversy, in writing with a copy to the Commission, of the purpose of the special study and the cost and time such special study will entail.

(2) If the party so notified is willing to conduct a similar special study or cooperate in the conducting of a joint special study, the parties may proceed with the special study after first advising the Commission of the additional time, if any, needed to complete the project.

(3) If the party so notified is unwilling to conduct a similar special study, that party shall so inform the party on the other side of the controversy, in writing with a copy to the Commission, of the reason for not performing similar special studies.

(4) Either party or both parties, jointly may request the Commission to hold a prehearing conference to determine the need for the special study.

(n) Prehearing conferences may be scheduled to resolve the validity of discovery requests. Prehearing conferences may also be used to expedite the procedures and to determine the need for special studies. If it is determined that special studies should be conducted and a party fails to conduct such special study or studies, in the absence of valid evidence to the contrary, prima facie, status will be accorded the special study conducted by the other party in the ensuing formal complaint proceeding.

(o) Complainant must submit its case-in-chief at the time the formal complaint is filed and formally docketed. All underlying papers in support of a case-in-chief shall be made available to the other side, upon request.

(p) Defending carrier or carriers must within 30 days of service of the formal complaint file an answer. Extensions of time to file an answer will be granted by order of the Commission upon the filing of a petition which demonstrates good cause.

(q) If the formal complaint was preceded by a notice to file a complaint, then the case-in-rebuttal must be filed with the answer. All underlying papers in support of a case-in-rebuttal shall be made available to the other side, upon request.

(r) If the formal complaint was not preceded by a notice of intent to file a complaint, then defending carrier or carriers must submit their case-in-rebuttal within 6 months of the filing of the complaint.

(s) Unless otherwise ordered by the Commission, divisions cases will be handled under the modified procedure, and oral hearing, if any, will be held only for cross examination.

(t) Once the formal complaint and both case-in-chief and in-rebuttal have been submitted, the parties may thereafter submit only reply evidence unless otherwise directed by order of the Commission. In any event, the

complainant must go forward with its case in an expeditious manner or otherwise the Commission may dismiss the complainant for lack of prosecution. Dilatory tactics by either party will not be tolerated.

(u) The following procedural rules and evidentiary presumptions are established: (1) Matters involving elements of profit and income tax, passenger, commuter and LCL deficits shall no longer be treated as proper items of expense in developing fully allocated costs (see *Rules to Govern Assembling & Presenting Cost Evidence,* 337 I.C.C. 298 (1970)), but shall be treated solely under the issue of revenue need; (2) All passenger, commuter or freight subsidies should be disclosed in accordance with the guidelines contained in the appendix hereto; (3) The same divisional basis should apply uniformly on all "border point" traffic, which is defined as traffic originated or terminated at one point on the territorial border, interchanged at another border point, and then transported into the interior of either territory; and (4) Absent valid evidence to the contrary, the appropriate territorial or system average origin and destination terminal costs shall be deemed to be applicable to origin and destination terminal services.

(Secs. 201, 202, 202(D), 206, of the Railroad Revitalization and Regulatory Reform Act (Pub. L. 94-210); the Interstate Commerce Act (49 U.S.C. 1(5)(D), 15(6)(b), 15 (17), 15 (18), and 15 (19); and the Administrative Procedure Act (5 U.S.C. 553 and 559))

[41 FR 32745, Aug. 5, 1976]

§ 1109.15 Expeditious procedures for publication of separate rates for distinct services.

(a) *Purpose.* These regulations are designed to facilitate the publication of and thus encourage the use of separate rates for distinct rail services. Increased utilization of such rates will also increase the attractiveness of investing in railroads and rail service related enterprises by creating a keener competition among rail carriers and other modes of transportation. Encouraging these goals, the Commission also seeks to promote experimentation and innovative ratemaking through the initiation of rail carriers and the requests of their customers. Special permission requests for publication on short notice will be granted whenever feasible, and any proceedings involving separate rates for distinct services will be expedited.

(b) *Definitions.* (1) Distinct rail services are those railroad transportation services, which are separate from line-haul transportation services necessary for the movement of freight, and for which a specific tariff item is published by the railroads either upon their own initiative or upon the request of any shipper or receiver of freight.

The following definitions refer to those factors included in § 1109.15(h) in the determination of reasonableness:

(2) The term "cash-outlays" as used in section 15(18) of the Act shall consist of the following:

(i) The annualized operating expenses, rents and taxes (including labor, materials and supplies, fuel and utilities, but excluding depreciation, amortization, and Federal income taxes) which change directly with the carrier's production of a distinct rail service.

(ii) The annualized cash-outlays equivalent to the carrier's capital investment, including the cost of providing such capital, which change directly with the carrier's production of a distinct rail service. These cash-outlays may be determined based on either the cost of sunk and new investment combined or the cost of new investment only.

(3) Demand is the willingness of a shipper to purchase a distinct rail service (as that term is defined in § 1109.15(b)(1)) at a specified price under the prevailing circumstances.

(c) *Title page.* In addition to requirements of 49 CFR 1300.3, a tariff title page must also state whether the tariff or supplement contains new or changed rates for distinct rail services as defined in § 1109.15(b) and bear the following notation:

This tariff (or supplement or loose leaf amendment) contains separate rates for distinct rail services (see item(s)———) within the meaning of 49 CFR 1109.15(b).

(d) *Letters of transmittal.* In connection with separate rates for distinct rail services filed with the Commission, the letter of transmittal (required in 49 CFR 1300.29) must also bear the notation found in § 1109.15(c).

(e) *Justification statements.* Justification statements in support of the publication of a separate rate or charge for a distinct rail service may be filed concurrently with the filing of the tariff. Information of the type specified in § 1109.15(h), if included in the justification statement, would assist the Commission in its initial evaluation of the proposal.

(f) *Protest(s) and investigation.* Protests to a tariff (or supplement) making reference on the title page to § 1109.15(b) must be verified and filed in accordance with § 1100.42(f). In the event of investigation or suspension, these proceedings will be accorded priority, and modified procedure (49 CFR 1100.45 to 1100.54), to the extent feasible, will be followed.

(g) *Reply to protest.* Replies to protests of rates proposals under this section should be filed and served promptly in accordance with § 1100.42(e). Respondents are urged to submit the information specified in § 1109.15(h) unless previously furnished.

(h) *Initial statement.* In order to expedite the proceedings in the event of the suspension of tariff schedules setting forth separate rates for distinct rail services or in the event that investigation without suspension of such schedules is ordered, respondent railroad or railroads shall submit in writing, under verfication, support of the tariff in issue. Such data should consist of the following:

(1) *Cash-outlays.* The dollars of "cash-outlays" as that term is defined in § 1109.15(b)(2). A full explanation of the methods, procedures and data used to determine "cash-outlays" should be supplied.

(2) *Demand.* Evidence supporting existence of a "demand" for the proposed service as that term is defined in § 1109.15(b)(3).

(3) *Market dominance.* If the proposal involves a new or increased charge for a distinct service, information of the type specified in § 1109.1 (regulation proposed in Ex Parte No. 320) should be supplied. However, if such data has been previously submitted in the same proceeding, a notation to that effect will suffice.

(4) *Revenues.* The annualized dollars of revenue to be obtained from the rate or charge associated with providing the distinct rail service.

(5) *Outputs.* The annualized number of service outputs associated with the rate or charge per service unit. For example, if the proposed rate is stated in cents per hundredweight, per car switched, or per stop, then the number of service outputs should be expressed as x number of hundredweight, cars switched, or stops made.

(6) *Ratios.* The revenue-to-cost ratio (percentage) for the distinct rail service, based on the revenues to be obtained, and the carrier's "cash-outlays."

(7) *Effect.* A statement as to how the proposed rate on the distinct rail service will encourage competition; promote increased reinvestment by the railroad; or encourage and facilitate increased non-railroad investment in the production of rail services.

(8) *Alternative data.* The submission of the above evidence, paragraphs (h)(1) through (7) of this section, represents data which the Commission believes would provide a basis for meaningful analysis of the lawfulness of such rates. However, in lieu thereof or in addition thereto, respondents may justify their proposal on the basis of other relevant evidence or cost levels. A full explanation of the methods and procedures used shall be provided.

(i) *Reporting requirements.* For the 6-month period beginning February 5, 1977, all common carriers by rail, subject to section 20, Part I of the Interstate Commerce Act; shall submit information showing those distinct rail service rates published in accordance with section 15(18) of the Act, showing actual or estimated revenues derived therefrom during the 6-month period. In addition, these reports, which shall be filed with the Commission by July 30, 1977, shall state whether the rates accomplished their intended purpose, and if not whether they intend any

change in the level of charge or other change.

(Ses. 201, 202, 202(D), 206, of the Railroad Revitalization and Regulatory Reform Act (Pub. L. 94-210); the Interstate Commerce Act (49 U.S.C. 1(5)(D), 15(6)(b), 15(17), 15(18), and 15(19); and the Administrative Procedure Act (5 U.S.C. 553 and 559))

[42 FR 9024, Feb. 14, 1977; 42 FR 36265, July 14, 1977, as amended at 42 FR 62139, Dec. 9, 1977]

PARTS 1110–1119—RAILCARRIERS CONSOLIDATION, FINANCE, AND REORGANIZATION

PART 1110—GENERAL REQUIREMENTS

Sec.

1110.1 Scope and applicability of rules and regulations.
1110.2 Definitions of terms used in the rules and regulations.
1110.3 Use of prescribed form.
1110.4 Information required; unknown or not available.
1110.5 Typographical specifications.
1110.6 Execution.
1110.7 Filing; number of copies; service.
1110.8 Additional information.
1110.9 Incorporation by reference.
1110.10 Waiver of rules.
1110.20 List of forms.

AUTHORITY: Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended; secs. 204, 205, 49 Stat. 546, as amended, 548, as amended; secs. 304, 316, 54 Stat. 933, 946; secs. 403, 417, 56 Stat. 285, 297, as amended; 49 U.S.C. 12, 17, 304, 305, 904, 916, 1003, 1017.

SOURCE: 32 FR 20091, Dec. 20, 1967, unless otherwise noted.

§ 1110.1 Scope and applicability of rules and regulations.

(a) The rules and regulations of this part govern the filing and handling of applications and reports, as prescribed in Parts 1111 to 1119 of this chapter, inclusive, except that any provision in such part covering the same subject matter as any such rule shall be controlling unless otherwise specifically provided herein.

(b) The rules and regulations of this part shall apply to applications and reports under the enumerated parts at such time as the Commission may designate as to each part.

§ 1110.2 Definitions of terms used in the rules and regulations.

(a) The term "applicant" means a person filing an application.

(b) The term "respondent" means a person filing a report required by the Interstate Commerce Act or the rules and regulations.

(c) Unless otherwise specifically provided, the terms used in the rules and regulations have the meanings defined in the Act.

§ 1110.3 Use of prescribed form.

The prescribed form is to be used as a guide in the preparation of the application or report. Each application required to be served as provided in § 1110.7 shall include a caption clearly and concisely describing the applicant or applicants and the authority sought. Other parts of the application and reports shall contain full and complete responses. Each part shall contain all of the item numbers and headings, but the text of any item may be omitted if all of the information required by such item is clearly set forth thereunder or in exhibits attached or referred to under the respective item number and heading. Where an item is not applicable, the application or report shall so state.

§ 1110.4 Information required; unknown or not available.

All information required must be given unless neither known nor available to the applicant or respondent. In such case, however, specific statement to such effect shall be made in the application or report in lieu of the omitted material, setting forth the reasons why the information is neither known nor available.

§ 1110.5 Typographical specifications.

The application or report shall be submitted in typewritten or similar form specified in Rule 15 of the General Rules of Practice (§ 1100.15 of this chapter), on paper approximately 8½ inches wide and not more than 13 inches long, with a lefthand margin of 1½ inches and, if typewritten, the impression must be on only one side of the paper. Exhibits may be in any convenient size but shall be folded to con-

form to the size of the application or report.

§ 1110.6 Execution.

The original application or report shall bear the date of execution and be signed with ink by or on behalf of each applicant or respondent. Execution shall be by the applicant or respondent if an individual, by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, and, if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Each person signing the application or report shall also sign a certificate showing, among other things, that such person has knowledge of the matters therein set forth and is duly authorized to verify and file the application or report. A false statement in an application or report is punishable under section 35 of the Criminal Code, 18 U.S.C. 1001. Additional signatures and certificates shall be furnished as directed by the Commission.

§ 1110.7 Filing; number of copies; service.

(a) The original and six copies of each application shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C., 20423.

(b) Copies of each application shall be served in the manner and upon the persons specified in the prescribed form or instructions. Proof of service of copies of the application shall be made in connection with and as part of the original application filed with the Commission.

(c) Each report shall be filed in duplicate with the Secretary of the Commission. No service of copies is required.

(d) Each copy shall conform in all respects to the original and, except as otherwise specifically provided, shall be complete in itself, but the signature in the copies may be stamped or typed.

§ 1110.8 Additional information.

The applicant or respondent shall submit such additional information to support its application or report as the Commission may require.

§ 1110.9 Incorporation by reference.

(a) If any required document shall have been previously filed in connection with another proceeding, it will be sufficient to refer to the docket number under which previously filed, provided that any change or changes which have occurred in any such document subsequent to the previous filing thereof shall be shown in an exhibit identified to correspond with the specific required exhibit.

(b) Except as in any form of application, or report otherwise specifically provided, income statements, balance sheets or supporting detail for items therein may not be incorporated by reference to annual or quarterly reports filed with the Commission or to other proceedings.

§ 1110.10 Waiver of rules.

If unusual difficulties arise in, or undue burden would result from, the furnishing of the information required in or in connection with any application or report, the Commission may, upon appropriate showing, modify such requirement.

§ 1110.20 List of forms.

CROSS REFERENCE: See § 1003.4 of this chapter.

PART 1111—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS AND LEASE PROCEDURES

Subpart A—Acquisition Procedures for Railroads Not in Reorganization

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Subpart A—Acquisition Procedures for Railroads Not in Reorganization

AUTHORITY: Sec. 5 Interstate Commerce Act, secs. 402 and 403, Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (4-R Act).

SOURCE: 42 FR 14871, Mar. 17, 1977, unless otherwise noted.

§ 1111.1 Contents of applications.

All *major* and *minor* applications under 49 U.S.C. 11344 and 11346 involving more than one common carrier by railroad shall show in the title thereof the nature of the proposed transaction and shall set forth, in the sequence indicated, the following information:

(a) A brief narrative description of the proposed transaction which shall be set apart from the information requested hereinafter and which shall generally discuss the following matters:

(1) A brief summary of the proposed transaction including the name of applicant.

(2) The proposed time schedule for consummation of the proposed transaction.

(3) The purposes sought to be accomplished by the proposed transaction, e.g., operating economies, elimination of excess facilities, extension of markets, improved financial viability.

(4) The nature and amount of any new securities or other financial arrangements.

(5) A brief summary of the applicant's public interest justification in support of the application.

(6) Any other supporting or descriptive statements which applicant deems material.

The narrative should also include appropriate references to supporting exhibits and statements contained in the application.

(b) Identification of applicant, showing:

(1) Full and correct name of applicant and the business address of applicant (street and number, city, county, State, and zip code).

(2) Whether applicant is an individual, firm, partnership, corporation, company, association, joint stock company, trustee, receiver, assignee, or other personal representative, and trade name or style, if any, under which applicant is doing business.

(3) Whether applicant is a career subject to part I of the act.

(4) State or States in which any part of the property of the applicant involved is situated.

(5) The name, title, and business address of the persons to whom correspondence with respect to the application should be addressed.

(6) Whether applicant or a subsidiary is affiliated with a motor or water carrier subject to the act; also the following information with respect to rail, motor, or water operations, where applicable: the date of the certificate, permit, or temporary authority; and the number of the Commission's docket assigned to the application upon which such certificate, permit, or temporary authority was issued or granted; or if application to engage in interstate or foreign commerce has been made but is still pending, date of the application and the docket number.

(c) Information respecting applicant, as follows:

(1) If applicant is a corporation:

(i) Date of incorporation[1] and Government, State, or territory of incorporation.

(ii) Name and business address of directors.

(iii) Name, title and business address of officers.

(iv) Name and business address of 10 principal stockholders as of last record date and their respective holdings.

(2) If applicant is a partnership:

(i) Date on which partnership was formed; and State and county in which it was formed.

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[1] If the applicant is incorporated or organized under the laws of, or authorized to operate in, more than one State, territory, or Federal district, give all pertinent facts as to such incorporation, organization, or authorization.

(ii) Name and business address of all present partners, including limited or silent partners and their respective interests.

(3) If applicant is an association or other form of organization, other than a corporation:

(i) Date of organization and place of organization.

(ii) Full description of the nature and objectives of the organization.

(iii) Name, title, and business address of officers and directors, or trustees.

(iv) Name and business address of applicant's 10 principal stockholders or owners.

(4) If applicant is a trustee, receiver, assignee, or a personal representative of the real party in interest:

(i) The name and address of the court, if any, under the direction of which applicant is acting.

(ii) Nature of the proceedings, if any, in which applicant was appointed.

(iii) With respect to the real party in interest: The information required under paragraphs (b) (1), (2), or (3) of this section, whichever is applicable.

(5) If paragraphs (1), (2), (3), and (4) are not applicable, indicate identity, structure, statutory or charter powers of applicant.

(6) If applicant is not a carrier, the type of business in which it is engaged, the length of time so engaged, and particulars of its present and prospective activities which have or may have a relation to transportation subject to the act.

(7) Whether applicant is controlled by any other corporation or corporations, and, if such control is held, state the name of the controlling corporation or each of such corporations, the form of control, whether sole or joint, direct or indirect, and its extent.

(8) The measure of control of ownership if any, now exercised by applicant over any carrier subject to the act, or over the properties of such carrier.

(9) If applicant, or the real party in interest, is part of a system or group of corporations or other persons, the relationship of the applicant, or of the real party in interest, to the members of such system or group, including the form and extent of such relationship, direct or indirect.

(10) Whether there are any intercorporate relationships, not disclosed in responses to prior instructions, through holding companies, ownership of securities, or otherwise, direct or indirect, between applicant and any carrier or person affiliated with any carrier, or between any person affiliated with applicant and any carrier or person affiliated with any carrier, at the time of making the application; if so, the nature and extent of such relationship; and, if applicant owns securities of a carrier corporation or corporations subject to the act, the name of the comporation, a description of securities, the par value of each class of securities held, and the percentage of total ownership.

(11) Whether any applicant or any of its affiliates has officers or directors in common with any other applicant or its affiliates; and, if so, a reference to the Commission's order or orders, if any, authorizing the holding of such positions in common, with the names of such officers or directors and the position held in each corporation.

(12) The amount of applicant's outstanding capital stock, by classes, and in connection therewith the par value or stated value of each share, its voting rights, if any, the total number of stockholders of record, and the voting rights of all security holders.

(d) Information respecting the nature of the transaction proposed and the terms and conditions thereof as follows:

(1) The nature of the transaction, *e.g.*, merger, control, coordination project, trackage rights.

(2) Briefly, the terms and conditions of the contract or agreement pursuant to which the proposed transaction is to be effected, including the manner in which it is proposed to consummated the transaction and the consideration, in money or otherwise, to be paid by applicant.

(3) Whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount source, and application of such financial assistance.

(4) Whether there is any financial or other relationship, direct or indirect, not disclosed in responses to prior instructions, existing at the present

time between applicant and other parties and affiliates involved in the proposed transaction; and, if so, a full explanation of such relationship.

(5) The route, termini, and mileage of all involved lines, the principal points of interchange, and the main line mileage and branch line mileage shown separately.

(6) Whether the property involved in the proposed transaction includes all the property of the applicant and, if not, described what property is included in the proposed transaction.

(7) Value of each of the properties involved in the proposed transaction as found by the Commission or if such value has not been found by the Commission, then the fair market value of the properties as independently appraised for the puposes of the proposed transaction; and, separately, the net cost of additions and betterments made after the date of valuation or appraisal.

(8) The policy and practice followed by applicant with respect to reserves for depreciation and similar reserves, including rates by classes of property.

(9) The market value of any securities acquired or proposed to be acquired in consummating the proposed transaction; or, if there be no ascertainable market value, the estimated value, giving the basis of the estimate.

(10) If any of the property covered by the application is encumbered and applicant has agreed to assume obligation or liability in respect thereof:

(i) A description of the property encumbered.

(ii) Amount of encumbrance and full description thereof, including maturity, interest rate, and other terms and conditions.

(iii) Amount of encumbrance assumed or to be assumed by applicant.

(11) If a consolidation or merger is proposed:

(i) The name of the company resulting from the consolidation or merger, and the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment.

(ii) The capitalization proposed for the company resulting from the consolidation or merger; and, separately, the amount and character of capital stock and other securities to be issued.

(e) Arguments in support of the proposed transaction, with particular regard to:

(1) The financial consideration involved in the proposed transaction, including an explanation of economies, if any, to be effected in operations, and increase, if any, in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

(2) The effect of the proposed transaction upon adequate rail and other transportation services to the public.

(3) The effect upon the public interest of the increase, if any, of total fixed charges resulting from the proposed transaction.

(4) The effect upon the public interest of any guaranty or assumption of payment of dividends or fixed charges contemplated in the proposed transaction.

(5) The effect upon the interest of carrier employees resulting from the proposed transaction.

(6) The effect upon the public interest of the inclusion, or the failure to include, other railroads in the territory involved in a proposed transaction under section 5(2) of the act.

[42 FR 14871, Mar. 17, 1977, as amended at 45 FR 62995, Sept. 23, 1980]

§ 1111.2 Exhibits.

(a) Required exhibits for *all* applications.[2]

(1) As exhibit 1, one or more of the following documents as may be appropriate:

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[2] Where two or more exhibits bear the same number, distinguish them by giving the second and each additional exhibit a distinguishing letter as, exhibit 1, exhibit 1-2, exhibit 1-b, et cetera.

If documents here requested have been previously filed in connection with an application under sections 1a, 1(18), 5, or 20a of part 1 of the act, it will be sufficient to make reference to the docket number under which filed, provided that any change or changes occurring in such documents since the filing thereof shall be shown in an exhibit identified to correspond with the specific exhibit requested.

(i) One copy each of the charter or articles of incorporation, and the bylaws and amendments thereof, of each applicant, duly certified by the appropriate public officer.

(ii) A properly authenticated copy of the articles of partnership, if any, of each partnership which is a party to the transaction.

(iii) A properly authenticated copy of articles of association, trust agreement, or other similar documents of each association or other form of organization, except a corporation, which is a party to the transaction.

(iv) A properly authenticated copy of the order of the court or instrument appointing each trustee, receiver, assignee, or personal representative which is a party to the transaction.

(v) If (i), (ii), (iii), and (iv) are not applicable, submit appropriate organizational or authorizing document or indicate why none is available or necessary.

(2) As exhibit 2, a properly authenticated copy of the annual report, if any, to stockholders or shareholders for each of the two calendar or fiscal years preceding the filing of the application.

(3) As exhibit 3, a copy of all resolutions of directors of each applicant, authenticated by a proper executive officer, authorizing the proposed transaction and, where applicable, the making of the application to the Commission for its approval and authorization; and, if the charter or bylaws of the applicant require approval of the stockholders, a copy of the resolution of stockholders authorizing the proposed transaction and the making of the application; all such resolutions to be accompanied by sufficient transcripts of the minutes of meetings of the stockholders or directors of the applicant to show the number of shares entitled to vote, the number of shares voted for and against the resolutions, and the numbers of shares/votes required to adopt the resolution.

(4) As exhibit 4, a copy of all resolutions of stockholders or directors of the applicant, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant, designating by name and for that purpose the executive officer by whom the application is signed and verified, and filed on behalf of the applicant. For purposes of exhibits 3 and 4, in the event the resolutions of stockholders have not been obtained at the time the application is filed then such resolutions shall be obtained as soon as feasible, but not later than the next regularly scheduled stockholders' meeting. A copy of such resolutions shall be filed with the Commission within 30 days following such meeting.

(5) As exhibit 5, if an organization other than a corporation is an applicant, documentary evidence showing authorization and designation of the individual or individuals signing, verifying, and filing on behalf of the applicant.

(6) As exhibit 6, if a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

(7) As exhibit 7, opinion of counsel of applicant that the transaction described in the application meets the requirements of the law and will be legally authorized and valid, if approved by the Commission with specific reference to any specially pertinent provisions of applicant's charter or articles of incorporation.

(8) As exhibit 8, a general or key map indicating clearly, in separate colors, or otherwise, on a suitable scale, preferably not smaller than 20 miles to the inch, the line or lines of applicant, parts of the line or lines of each applicant in their true relation to each other, short-line connections, other rail lines in the territory, and the principal geographic points of the region traversed. Whenever possible, this map should not be over 30 inches in its largest dimension. There shall also be furnished three copies of the map, unbound, for the use of the Commission.

(9) As exhibit 9, a copy of any contract or other written instrument entered into, or proposed to be entered into pertaining to the transaction covered by the application.

(10) As exhibit 10, the following:

(i) A copy of any agreement or agreements with employee organiza-

tions entered into as a result of the proposed transaction.

(ii) For all personnel not covered under the Railroad Retirement Act, a list of the pension plans currently in effect, indicating whether or not they are funded, the extent of any unfunded liability, and the time required to bring the plans to a fully funded level.

(iii) The number, location, craft or class and classification of all positions of the applicant and other involved carriers by railroad, which under the proposed transaction are to be abolished, consolidated, created or transferred (including the point or points from and to which positions will be transferred).

(iv) For each of the changes specified in item (iii), the cost and savings to applicant and other involved carriers by railroad in effectuating such changes, listed for each of the 3 years following consummation of the proposed transaction and the amount by craft or class and classification to which such costs and/or savings will be attributed.

(v) The date or dates on which each job abolishment, transfer, consolidation, or creation set forth under item (iii) above is to be effectuated and a statement as to whether or not implementing agreements have been negotiated with appropriate labor organizations with respect to such proposed changes.

(vi) The rate of attrition for applicant and other involved carriers by railroad by craft or class and classification for the last 6 years preceding the filing of the application.

(11) As exhibit 12, information and data with respect to environmental matters prepared in accordance with the regulations in Part 1108 of this title of the Code of Federal Regulations.

(12) As exhibit 13, information and data with respect to energy consumption prepared in accordance with the regulations in Part 1106 of this title of the Code of Federal Regulations.

(b) The following information is required only for *major* transactions:

(1) As exhibit A-14, the following data to be submitted by each applicant *and any rail carrier seeking inclusion* in the proposed transaction:

(i) Gross ton-mile traffic density charts which shall contain a map graphically showing principal lines (those handling 1 million gross ton-miles or more per year) and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between major freight yards and terminals, including major intramodal and intermodal interchange points, using the corporate or political subdivision name of the points shown as well as the railroad station name. The mileage of each segment of line should be shown on the chart. Data shown in the density chart shall be for the latest available full calendar year preceding the filing of the application.

(ii) Revenue carload interchange data between applicant and connecting linehaul rail carriers or water carriers (deleting intermediate switching railroads, if any) setting forth in a table, designated table A, the gateway involved, each connecting line-haul railroad or water carrier, and for each connecting line-haul railroad or water carrier the number of interchange carloads originating on applicant's line, the number of interchange carloads terminating on applicants' line, the overhead traffic delivered or received by applicant, and a separate total of overhead traffic and the total cars interchanged. Gateways to be listed shall be those handling 5,000 or more revenue carloads or 5 percent of total revenue carloads, whichever is smaller, annually. Gateways shown in table A should follow a geographical sequence, *e.g.*, east to west, in the applicant railroad's system. Where two or more gateways are contiguous or nearly contiguous, they should be totaled (as examples, Dallas-Fort Worth, Minneapolis-St. Paul, Omaha-Council Bluffs, et cetera). If necessary, such grouped gateways may *also* be shown separately in supporting tables. Data shown in the interchange tables shall be for the latest available full calendar year preceding the filing of the application. In a separate table, designated table B, for each of the gateways listed in table A described above, there shall be shown for each connecting carrier the *origin State and the destination State* and the revenue carloads inter-

changed. An example of tables A and B follows:

(A) Table A data shall be organized as shown in the following sample table:

TABLE A.—REVENUE CARLOADS INTERCHANGE, CALENDAR YEAR

Gateway	Connection line-haul railroad or water carrier	Applicant's revenue carloads					
		Originated or applicant's line	Terminated on applicant's line	Overhead (bridge)		Total	Total cars interchanged
				Deliv. by applicant	Rec. by applicant		
Point A	Carrier X	1,000	1,000	1,000	1,000	2,000	4,000
Do	Carrier Y		50	6,000		6,000	6,050
Do	Carrier Z	5,000	4,000				9,000
Do	Total	6,000	5,050	7,000	1,000	8,000	19,050
Point B	Carrier M	2,000	4,000	1,000	100	1,100	7,100
Point C	Carrier R	1,000	500	500	500	1,000	2,500
Do	Carrier X			5,000	5,000	10,000	10,000
Do	Total	1,000	500	5,500	5,500	11,000	12,500

(B) Table B data shall be organized as shown in the following sample table:

TABLE B.—REVENUE CARLOADS INTERCHANGED, STATE-TO-STATE MOVEMENTS, BY GATEWAY, CALENDAR YEAR

Connecting line-haul railroad or water carrier, name	Origin State, gateway	Destination State	Rev. carloads
Carrier R	Alabama	New York	400
Do	do	Ohio	100
Do	do	Pennsylvania	500
Do	do	Vermont	500
Do	Pennsylvania	Alabama	600
Do	do	Georgia	400
Carrier X	Alabama	New Jersey	5,000
Do	New York	Florida	2,500
Do	do	Georgia	2,500

(iii) Revenue carload origin and destination data for the latest available full calendar year preceding the filing of the application, listing the following:

(A) Points of origin of 5,000 or more revenue carloads of 5 percent or more of applicant's total originated revenue carloads, whichever is smaller, broken down to show originations of local and interline carloads for each point.

(B) Points of destination of 5,000 or more revenue carloads, or 5 percent or more of applicant's total terminated revenue carloads, whichever is smaller, broken down to show terminations of local and interline carloads for each point. The above-listed data shall include all of applicant's carloads at each point originated or terminated, as the case may be, by a line-haul, terminal, or switching railroad or by a motor carrier performing pickup or delivery service, except where such information would identify a specific shipper or shippers or a specific receiver or receivers.

(2) As exhibit A-15, the following data:

(i) A summary table showing the freight car fleet cars owned and leased by applicant indicating by year for the 10-year period preceding the filing of the application the number of box flat (including rack cars), gondola, open hopper, covered hopper, refrigerator, stock, tank, miscellaneous, and total number of cars owned and leased, and the aggregate capacity of these cars.

(ii) A table showing the applicant's revenue freight traffic, indicating by year, for the 10-year period preceding filing of the application, the number of local, interline originated, interline terminated, overhead, total carloads, total revenue tons, revenue ton-miles, and total freight revenue.

(iii) A table showing commodity group revenue (at the two-digit level of the STCC) for the 10 largest revenue producing commodity groups as a percentage of total revenue for the 10-

year period preceding the filing of the application, indicating for each year the 10 largest commodity groups, the revenues attributable to each group and the percentage of that group's revenue as it relates to total revenue.

(iv) For the commodity groups shown in the table required in item (iii) above, a table showing commodity group tonnage as a percentage of total tonnage, for the 10-year period preceding the filing of the application, indicating by year the various commodity groups, the tonnage attributable to each group and the percentage of that group's tonnage as it relates to total tonnage. For the purpose of this exhibit, applicant should utilize the year immediately preceding the filing of the application for which data is available as the first year of the 10-year period. For each of the above items separate tables should be prepared covering, where appropriate, similar data for class I railroad subsidiaries and for predecessor railroads, if any, in existence during a part of the 10-year period covered.

(3) As exhibit A-16,[3] a copy of a traffic study detailing estimated gains in traffic and revenues expected to result from the consummation of the proposed transaction. The traffic study shall be prepared in conformity with the following instructions:

(i) The period covered by the traffic study shall be for the latest full calendar year for which data are available preceding the filing of the application.

(ii) At a minimum, the traffic study shall be based on the complete data shown on the waybills covering the movements studied. The complete data on these waybills, together with all other information regarding the movememt relied upon for determining the gains in traffic and revenue, shall be reproduced totally in an abstract of all the study movements; that is, all movements, whether or not a gain has been determined. On abstracts of movements for which a gain has been determined, the amount of the gain shall be shown. The initial of the person or persons making the determinations shall be shown on all abstracts. *Only two copies of the abstract of the study movements shall be filed with the original application.* A conformed copy of such abstract shall be maintained at applicant's principal place of business and shall be made available, upon request, to parties in the proceeding. Copies of the abstract need not be included as part of the exhibits to the copies of the application furnished to the Commission or served upon designated persons.

(iii) The traffic study shall include a statement showing the name and title of (A) the person or persons making the initial determination of gains, if any; (B) the person or persons making the final determination; and (C) the method used to resolve conflicting determinations, if any.

(iv) Traffic studies shall utilize probability sampling techniques and shall include a full explanation of the sample as described in "Guidelines for the Presentation of the Results of Sample Studies," February 1971, by the Commission's Bureau of Economics, or superceding publications, if any.

(v) The traffic study shall include the written instructions, if any, for determining the amount of gains. All instances where those instructions were not followed but were subordinated to other, unwritten instructions shall be clearly shown, together with references in each instance to the appropriate movement set forth in the abstract of movements under § 1111.2(b)(3)(ii), (exhibit A-16). Applicants shall furnish the unwritten instructions and the reasons for the deviation.

(vi) Where specific percentages (less than 100 percent) are applied to represent the amount of gains on movements, the criteria used to arrive at such percentages shall be stated precisely.

(vii) The estimates of gains in traffic and revenues shall be broken down separately for each connecting carrier, including carriers by other modes from which the traffic is gained, as follows:

(A) Applicant's interline originated traffic by off-junction with connecting carrier.

[3] This exhibit is not required in applications involving the acquisition of a line of railroad where the line to be acquired has been authorized by the Commission to be abandoned or the line to be acquired connects with no carrier other than applicant.

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(B) Applicant's interline terminated traffic by on-junction with connecting carrier.

(C) Applicant's overhead traffic, by on- or off-junction with connecting carrier.

(viii) The traffic study shall contain a statement showing the revenue gains, the estimated cost of handling the gained traffic, and the net gain thus derived, including a detailed description of the methods used to compute the estimated costs of handling the gained traffic.

(4) As exhibit A-17, a complete description of the proposed operating plan to be effectuated upon approval of the transaction. This exhibit shall provide data, projected at least 3 years following consummation of the proposed transaction, describing the following aspects of the operating plan:

(i) The patterns of service on the properties, including the proposed principal routes, proposed consolidations of main-line operations, and the anticipated traffic density and general categories of traffic on all main and secondary lines in the system.

(ii) The basic operating and train blocking plan of the system, including the identification of system classification yards, and the anticipated workload of such yards, supported by a proposed blocking plan based on projected origin and destination traffic data.

(iii) The location of existing shops and repair facilities, and identification of major installations to be discontinued, and a description of the system repair function of each remaining facility.

(iv) If commuter or other passenger services are operated over the lines of applicant, detail any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations.

(v) The equipment requirements of the proposed system, including locomotives, rolling stock by type, and maintenance-of-way equipment, plans for acquisition and retirement of equipment; and projected improvements in equipment utilization, together with an explanation of the operating changes that will cause such improvements.

(vi) The extent to which deferred maintenance or delayed capital improvements apply to any road or equipment properties involved, and the schedule for eliminating such deferrals. Also details of system rehabilitation and upgrading plans including proposed yard and terminal modifications, together with an estimate of anticipated service improvements or operating economies associated with such projects.

(5) As exhibit A-18, general balance sheets, as appropriate, of the following:

(i) Transferee on a corporate entity basis.

(ii) Transferee's parent company on a corporate entity basis.

(iii) Each subsidiary of transferee and transferor, on a corporate entity basis.

(iv) Transferee and subsidiaries on a consolidated basis.

(v) Transferor on a corporate entity basis.

(vi) Transferor and subsidiaries on a consolidated basis.

All such statements requested in (i)-(vi) shall show the latest available date, not exceeding 6 months prior to the filing of the application.

(vii) Where the transaction involves a proceeding other than a control, a *pro forma* balance sheet statement giving effect to the proposed transaction as of the date of the balance sheets required above. The *pro forma* data shall be presented in columnar form showing in the first column the balance sheet of transferee on a corporate entity basis, in the second column a balance sheet of transferor, on a corporate entity basis, in the third column *pro forma* adjustments and eliminations so as to indicate in the fourth column, transferee's balance sheet "giving effect" to consummation of the proposed transaction. Each adjustment and elimination shall be properly footnoted and fully explained.

(6) As exhibit A-19, income statements, as appropriate, of the following:

(i) Transferee on a corporate entity basis.

(ii) Transferee's parent company on a corporate entity basis.

(iii) Each of transferee's subsidiaries on a corporate entity basis.

(iv) Transferee and subsidiaries on a consolidated basis.

(v) Transferor on a corporate entity basis.

(vi) Transferor and subsidiaries on a consolidated basis.

All statements requested in items (i)-(vi) are to be for each of the immediately preceding 3 calendar years, which may include for the most recent calendar year the months or quarters then available (preferably to the date of the balance sheet).

(vii) Where the transaction involves a proceeding other than a control, a *pro forma* income statement showing transferee's estimate of revenues, expenses, and net income for each of the 3 years following consummation of the transaction. The *pro forma* data shall be presented in columnar form, the first column showing transferee's actual income statement on a corporate entity basis for the latest available period extended to a 12-month period, the second column a similar income statement for the transferor, the third column forecasted adjustments to the combined revenues, expenses, and net income to reflect increases or decreases anticipated under the unified operation and the fourth column a compilation of the first three columns into a *pro forma* income statement forecasting operations during the first year following consummation and each of the 2 succeeding years. The adjustments are to be supported by a statement explaining the basis used in determining the estimated changes in revenues, expenses, and net income appearing in the third column. Additionally, if applicant determines that the major financial advantage to be derived from the proposed transaction will not occur within the above-prescribed period, then applicant shall furnish additional information to reflect the number of years within which the financial advantages will be realized. The basis for all such data furnished shall be fully explained and supported.

(viii) Transferor's and transferee's statement of sources and application of funds for the current year, and a forecast of source and application of funds for each carrier (if a merger or consolidation, the surviving or resulting corporation) for the year following consummation of the proposed transaction. The form and content of these statements should be constructed in accordance with schedule 309, "Statement of Changes in Financial Position" required in the Annual Report R-1 for Class I Railroads.

(c) The following information is required for *minor* applications:

(1) As exhibit C-14, information and data, projected at least 3 year following the consummation of the proposed transaction, describing the following aspects of the operating plan:

(i) Any significant changes in patterns of service.

(ii) Traffic level and density on lines proposed for joint operations.

(iii) Impact on the use of yards or shop facilities and any necessary modifications to yards or terminals.

(iv) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

(v) Operating economies.

(vi) Any associated discontinuances or abandonments.

(2) As exhibit C-15, general balance sheets of the following:

(i) Applicant on a corporate entity basis.

(ii) Applicant's parent company on a corporate entity basis.

(3) As exhibit C-16, income statements, of the following:

(i) Lessee on a corporate entity basis.

(ii) Lessee's parent company on a corporate entity basis (if affected).

[42 FR 14871, Mar. 17, 1977, as amended at 44 FR 2177, Jan 10, 1979; 45 FR 62995, Sept. 23, 1980]

§ 1111.3 Definitions.

(a) *Applicant.* The parties initiating a transaction (except the Secretary of Transportation is not an applicant when he proposes a transaction under 11346). In minor trackage rights applications, the carrier that owns the trackage over which another carrier

seeks the right to operate is an applicant but is not required to provide the *information* required of an applicant.

(b) *Applicant carriers.* Applicant, all carriers related to the applicant, and all other carriers involved in the transaction. This does not include carriers who are involved in an existing trackage rights agreement with applicants.

(c) *Major market extension.* A major market extension includes and end-to-end or other extension of or change in applicant carriers' routes and services and any change in applicant carriers' participation in additional through routes or joint rates. A major market extension may also significantly increase competition by (1) extending service into a new market, (2) expanding service in a currently served market when another carrier concurrently contracts its service to that market as part of the same transaction, or (3) providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (i) Creating a shorter route; (ii) providing enhanced service capabilities (speed is not the only factor); (iii) entering an interchange or market generating more than 5,000 cars per year or 5% of applicant's traffic; (iv) filing the application as a condition of relief to a pending proceeding; and (v) permitting a carrier to become more competitive (extending its length of haul). See, *Burlington Northern, Inc.—Control & Merger—St. L.*, 354 I.C.C. 616, 617 (1978).

(d) *Railroad.* Any common carrier by railroad as defined in 49 U.S.C. 10102 (17)-(18).

(e) *Transferee.* The transferee is:

(1) The acquiring corporation in a control proceeding,

(2) The surviving corporation in a merger,

(3) The resulting corporation in a consolidation,

(4) The lessee in a lease, and

(5) The purchaser in an acquisition.

(f) *Transferor.* The transferor is:

(1) The corporation acquired in a control proceeding,

(2) The merging corporation in a merger,

(3) All corporations to be consolidated in a consolidation,

(4) The lessor in a lease, and

(5) The seller in an acquisition.

[45 FR 62995, Sept. 23, 1980]

§ 1111.4 Procedures.

(a) *General.* (1) Any document filed with the Commission, including applications, pleadings, etc., shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Commission may require the submission of additional copies of any document previously filed by any party to the proceeding.

(2) The Commission shall prepare and serve a service list on all persons who have indicated an interest in the proceeding 55 days after the application has been accepted. From time to time, this service list will be revised.

(3) The original and 20 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *minor* proceedings.

(4) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.

(b) *Pre-filing notification.* (1) Between 3 to 6 months prior to the proposed filing of an application in a *major* proceeding, applicant shall file a notice with the Commission. The notice shall:

(i) Briefly describe the transaction,

(ii) Indicate the year to be used for the Traffic study,

(iii) Indicate the 3 month period during which the application will be filed and the approximate filing date of the application, and

(iv) Indicate why the transaction is *major.*

(2) The Commission will publish a notice in the FEDERAL REGISTER within 30 days of the filing of the applicant's notice. The notice to be published shall contain:

(i) A brief description of the transaction,

(ii) The year to be used for the Traffic study,

(iii) The approximate filing date, and

(iv) A determination if the transaction is *major.*

(3) A pre-filing notice may be amended to indicate a change in the anticipated filing date.

(c) *Application.* (1) There is a $700 filing fee to file an application with the Commission under these procedures (this may be referred to as the primary application to distinguish it from inconsistent, inclusion, or other directly related applications). There is no filing fee for a directly related application, or for a responsive application (*e.g.,* a petition for inclusion, an inconsistent application, or any other application seeking affirmative relief).

(2) Filing. (i) The original of all applications shall be signed in ink by the applicant, if an individual; by all partners, if a partnership; and if a corporation, association, or other similar form of organization, by its president, or such other executive officer having knowledge of the matters therein contained and duly designated for that purpose by the applicant. Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any person controlling an applicant shall also sign the application.

(ii) The application shall be filed with Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(iii) Each copy of the application shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and the notarial seal may be omitted. In like manner where certified copies of documents are filed with the original application, conformed copies thereof, showing certification in stamped or typewritten form, will be sufficient to accompany the additional copies of the application.

(iv) All applications required to be filed with the Commission or served on designated persons shall include all exhibits, except as otherwise specifically noted. Information may be incorporated by reference in the application. However, this information must be up to date.

(v) The applicant shall submit such additional information to support its application as the Commission may require.

(vi) Applicant shall file concurrently with applications under sections 11344 and 11346 all directly related applications, e.g., those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, acquire trackage rights, etc.

(vii) Exceptions to required exhibits;

(A) The original and one copy of Exhibit A-14, Table B shall be filed with the Commission. It need not be served on interested persons unless requested. Copies shall be maintained at applicants' headquarters for inspection by interested parties. Applicants must also file with the Commission one copy of a machine readable tape containing only the data shown in Exhibit A-14, Table B. This tape will be returned to applicants when the Commission issues its decision, and no use of the tape will be made by the Commission other than for the purpose of adjudicating the application.

(B) The original and one copy of the SMS used in Exhibit A-16 shall be filed with the Commission. Copies of the SMS need not be included as part of the exhibits to the copies of the application furnished to the Commission or served upon designated persons. A conformed copy of the SMS shall be maintained at the principal place of business of the carrier performing the study and shall be made available upon request to parties in the proceeding.

(viii) The application shall contain a certificate of service indicating that all persons designated in § 1111.4(c)(5) have been served with a copy of the application.

(3) In a *major* transaction, and in all responsive applications, all of the direct testimony of applicants, in the form of verified statements, shall be filed and served with each application.

(4) The application and all exhibits shall be considered part of the evidentiary record upon acceptance. Any portion of an application and exhibits will remain subject to motions to strike.

However, no motion need be made to have the application and exhibits admitted to the evidentiary record. If a *major* transaction is designated for oral hearing the presiding Administrative Law Judge shall have discretion in extraordinary circumstances to allow for the presentation of oral or written direct testimony not previously submitted with the application.

(5) Service. (i) The applicant shall serve a conformed copy of an application filed under these procedure by first class mail upon:

(A) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

(B) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW, Washington, D.C. 10590), except where the Secretary is the proposing party;

(C) The Attorney General of the United States;

(D) The Federal Trade Commission; and

(E) In *major* transactions all persons requesting a copy after the prefiling notice is published in FEDERAL REGISTER.

(ii) The applicant shall serve a conformed copy of an application filed under 49 U.S.C. 11346 by first class mail on the Secretary of Labor in addition to the parties in paragraph (c)(5)(i)(A) of this section.

(6) Application format. (i) The application shall be in the same sequence as the information is requested in these procedures, and shall be numbered to correspond to the numbering in the procedures.

(ii) If any material required in the application would lend itself to being placed in an appendix, this should be done. The appendix and application shall be tabulated and cross-referenced in an index for ease in locating and referring to the information. The appendices shall be in the same sequence as the information required by these procedures. If certain information required in the application is not applicable, provide an explanation. The application should be bound, and it may be bound in more than one volume. If an application is more than one volume, the cover of each volume should be in a different color. The pages in each volume should begin with 1, and shall be sequentially numbered.

(iii) If a question arises regarding an interpretation of the information or format to be included in the application, the party may contact the Commission's Section of Finance for assistance. It will provide informal opinions and interpretations which are not binding on the Commission.

(iv) All filing, service, or other requirements of these procedures must be complied with when filing the application. Copies of the application filed with the Commission shall be marked in red "Railroad Consolidation Application" on the transmittal envelope or package.

(v) The application shall conform to the requirements of 49 CFR 1100.13.

(7) Acceptance or rejection of an application

(i) The Commission shall accept a complete application no later than 30 days after the application is filed with the Commission by publishing a notice in the FEDERAL REGISTER. A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver. The Commission notice published in the FEDERAL REGISTER shall indicate: (A) The merger or control of at least two Class I railroads, as defined by the Commission, shall be decided within the time limits of 49 U.S.C. 11345(b); (B) transactions of regional or national transportation significance shall be decided within time limits specified in 49 U.S.C. 11345(c); or (C) any other transaction covered by 49 U.S.C. 11343-11345 shall be decided within time limits specified in 49 U.S.C. 11345(d).

(ii) The Commission shall reject an incomplete application by serving a decision no later than 30 days after the application is filed with the Commission. The decision shall give specific reasons why the application was rejected, and specify where the applica-

tion was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference, and the Commission will determine whether the resubmitted application conforms with all prescribed regulations. The resubmission or refiling of an application shall be considered a *de novo* filing for the purpose of computation of the time periods, provided that the resubmitted application is accepted.

(d) *Response to application.* (1) Written comments

(i) Written comments must be filed no later than 45 days after an application is accepted, except that these comments on transactions defined in § 1111.5(a) (2) or (3) or § 1111.5(b) must be filed within 30 days of the acceptance of an application.

(ii) Written comments shall be concurrently served by first class mail on:

(A) The applicants (at each address given in the application),

(B) The United States Secretary of Transportation,

(C) The Attorney General of the United States, and

(D) All parties of record within 10 days of service of the service list by the Commission.

(iii) Written comments must contain:

(A) The docket number and title of the proceeding.

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

(C) The commenting party's position (in support, opposition, or undetermined).

(D) If the commenting party intends to participate formally in a proceeding or merely comment upon the proposal.

(E) If desired, a request for an oral hearing with reasons supporting this request.

(F) A list of all information sought to be discovered from applicant carriers.

(G) Railroads filing written comments in *major* transactions must submit:

(*1*) Any existing preferential solicitation agreements.

(*2*) A list of all run through train operations.

(*3*) An initial list of specific protective conditions sought and whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission, along with a description of the proposed transactions. This will be considered a pre-filing notice without which the Commission will not entertain applications for this type of relief.

(H) An initial list of specific protective conditions sought by non-railroads in *major* transactions.

(I) A detailed statement of the issues in *major* transactions underlying the statutory criteria, policy statement, and antitrust policy which the Commission must consider in the proceeding.

(iv) All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.

(2) The Secretary of Transportation and Attorney General of the United States shall file written comments with the Commission within 60 days of the date of acceptance of the application. For transactions defined in § 1111.5(a) (2) or (3) and 1111.5(b) these comments are due within 4 days of the date of acceptance of the application.These comments shall contain the information in paragraph (d)(1)(iii) of this section. Copies of these comments shall be concurrently served by first class mail on:

(i) The applicants,

(ii) The parties to the proceeding who have filed written comments, and

(iii) The Attorney General of the United States or Secretary of Transportation (whichever applies).

(3) A second list of protective conditions shall be filed with the Commission within 75 days of acceptance of the application. It shall be concurrently served by first class mail on all parties of record. The second list of protective conditions shall modify the first list based upon changing conditions, such as protective conditions sought by other parties to the proceeding. Parties to the proceeding shall not be permitted to seek any protective conditions not contained in the

second list of protective conditions. This does not preclude refinements in conditions sought, particularly when stipulations to conditions are reached.

(4) All responsive applications shall be filed within 90 days, after the primary application has been accepted except those filed for transactions defined in § 1111.5(a) (2) or (3) which shall be filed within 60 days after acceptance. No inconsistent applications or petitions for inclusion will be permitted for applications filed under § 1111.5(b). This includes inconsistent applications, petitions for inclusion, and any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). These applications shall comply as fully as possible with any appropriate Commission regulations, and are presumed to be major market extensions. Any petition for waiver, clarification, or extension of time (of up to 90 days to complete the application) shall be filed no later than 45 days before the application is due to be filed. A petition seeking to rebut the presumption of a major market extension must also be filed at least 45 days in advance of the filing of the application. It will be considered in the same manner as petitions for clarification under §1111.4(f). Each responsive application filed and accepted (if required) is considered consolidated with the primary application.

(5) In order for a protestant to question the accuracy of diversion estimates, other than through cross-examination, it must prepare and file with the Commission a traffic study that complies with the requirements of § 1111.2(b)(3). This traffic study must be filed within 90 days after the primary application is accepted.

(e) The Commission may order an oral public hearing or a hearing by written submissions. The determination may be made on the basis of written comments. Generally, designation will be made on the basis of indications of a need for hearing.

In transactions filed under § 1111.5(a) (2) or (3), the Commission will conclude the oral hearing, hearing by written submission, other evidentiary proceedings within 180 days following the date the application is accepted. A final decision will be issued 90 days after the close of evidence in these proceedings. For applications under § 1111.5(b), the Commission will conclude the evidentiary proceedings within 105 days following the date the application is accepted. A final decision will be issued 45 days from the completion of the evidentiary period in these cases. Where the transaction is filed under § 1111.5(a)(1), the evidentiary hearings shall be concluded not more than 24 months following the date the application is accepted. The Commission will issue a final decision by the 180th day after the conclusion of the evidentiary proceeding.

(f) *Waiver or clarification.* (1) Upon petition of a prospective applicant, the Commission may waive or clarify a portion of these procedures. A petition to waive all of the procedures will not be entertained.

(2) Petitions for waiver or clarification must be filed at least 45 days before the application is filed.

(3) No replies to a petition for waiver will be permitted. An exception to this will be made where a proceeding involving the same parties and a related transaction is pending before us.[4] In that case, the petition shall be served by first class mail on all parties to the pending proceedings, with a reply due within 10 days of service. Replies to a petition for clarification shall be permitted. They must be filed 10 days after the petition.

(4) A waiver or clarification granted to any applicant in a proceeding shall apply to any other applicants filing directly related applications or responsive applications.

(5) All petitions for waiver or clarification must specify the sections for which waiver or clarification is sought and give the specific reasons why each waiver or clarification is necessary.

(g) *Notice of exemption.* (1) In order to qualify for an exemption under § 1111.5(c), a railroad must file a veri-

[4] *See Itel Corp.-Control-Green Bay and W.R. Co.*, 354 ICC 232, 233 (1978).

fied notice of the transaction with the Commission 1 to 3 weeks before the transaction is consumated indicating the proposed consummation date.

(2) The notice shall contain the information required in §§ 1111.1(a)(1-3) and (b)(1 and 4), and 1111.2(a)(8 and 9).

(3) The commission shall publish a notice in the FEDERAL REGISTER within 30 days of the filing of the notice of exemption. If the notice of exemption contains false or misleading information which is brought to the commission's attention, the Commission shall summarily revoke the exemption for that carrier and require divestiture.

(h) *Special procedures for applications filed under 49 U.S.C. 11346.* (1) An applicant which has filed, or prepared for filing, a merger or consolidation proposal with the U.S. Department of Transportation pursuant to section 11346 may submit a copy of that proposal in partial satisfaction of the information requirements of the application. An application following this course of action shall provide cross-references to the accompanying proposal indicating specifically those portions which contain the information required under each applicable section of the procedures.

(2) In initiating a transaction under 49 U.S.C. 11346, any railroad or the Secretary of Transportation may use the procedures, provided:

(i) The transaction involves a merger, consolidation, unification, or coordination project (as described in section 5(c) of the Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets;

(ii) The transaction has been proposed (A) by the Secretary of Transportation, with the consent of the railroads which are parties to the transaction, or (B) by any railroad which, not less than 6 months prior to such submission to the Commission, submitted the proposed transaction to the Secretary of Transportation for evaluation pursuant to 49 U.S.C. 11346(3)(f); and

(iii) The application is filed on or before December 31, 1981. At the time an application is filed with the Commission pursuant to 49 U.S.C. 11346, notice of the filing of the application shall be furnished to the Secretary of Transportation by the proposing party, except where the Secretary is the proposing party.

(3) Report of the Secretary of Transportation. The Secretary of Transportation shall submit a written report on the proposed transaction to the Commission, in accordance with 49 U.S.C. 11346(f)(v), within 10 days from the date of submission of an application to the Commission.

(4) Written comments shall comply with § 1111.4(d)(1), but must be filed within 30 days of the application's acceptance and must be served on the Secretary of Labor.

(5) Public hearings. The Commission shall commence a public hearing on each application filed under this section within 90 days after the date of receipt of the complete application. The hearing shall be held before a panel of the Commission duly designated by the Commission. The panel shall request the views of (i) the Secretary of Transportation, regarding the effect of the proposed transaction upon the national transportation policy as stated by the Secretary, (ii) the Attorney General, regarding the competitive or anticompetitive effects of the proposed transaction, and (iii) the Secretary of Labor, regarding the effects on the proposed transaction on railroad employees and whether the employee protective provisions contained in the proposal are adequate. Within 35 days after receipt of the request or within such other reasonable time as the panel may prescribe, the views of the three above-designated persons shall be submitted to the Commission in a written report. At the same time that each such report of the Secretary of Transportation, the Attorney General, and the Secretary of Labor is submitted to the Commission, the persons submitting such report shall serve, by first-class mail, a copy of the report upon all parties of record to the proceeding, and shall so certify to the Commission. The designated panel shall complete the public hearing within 180 days after the date of referral of an application to the panel, and the panel may, in order to meet the requirements of the statute, prescribe rules and make such ruling

as may tend to avoid unnecessary cost or delay. The panel shall recommend a decision and certify the record to the full Commission for final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this paragraph, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

(i) If the Commission does not issue a decision that is a final action under 49 U.S.C 10327, it will send written notice to Congress that the decision was not issued and the reasons why it was not issued.

[45 FR 62996, Sept. 23, 1980, as amended at 45 FR 74489, Nov. 10, 1980; 45 FR 79816, Dec. 2, 1980]

§ 1111.5 Types of transactions.

Transactions proposed under 49 U.S.C. 11344 and 11346 involving more than one common carrier by railroad are of three types: *Major, minor,* and *exempt.*

(a) A *major* transaction includes:

(1) A control or merger involving two or more class I railroads;

(2) Any other control or merger; or

(3) A major market extension resulting from:

(i) Acquisition

(ii) Lease

(iii) Partial purchase

(iv) Purchase

(v) Trackage rights, or

(vi) Any other agreement or coordination project.

A major transaction must involve one or more class I railroads acting together with one or more other class I or class II railroads. The transactions defined in paragraphs (a) (2) and (3) of this section are of regional or national transportation significance as defined in 49 U.S.C. 11345.

(b) A *minor* transaction is one which involves more than one railroad and which is not a *major* or *exempt* transaction.

(c) A transaction is *exempt* when railroads participate in one of the transactions involved below. The Commission has found that its prior review and approval of this class of persons and these transactions (1) is not necessary to carry out the transportation policy of 49 U.S.C. 10101; (2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and (3) would serve little or no useful public purpose. See 49 U.S.C. 10505.

(1) Acquisition of a line of railroad which would not constitute a major market extension where the Commission has found that the public convenience and necessity permit abandonment.

(2) Acquisition of a non-connecting carrier or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I carrier.

(3) Transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

(4) Renewal of leases or trackage rights contracts and any other matters where the Commission has previously authorized the transaction, and only an extension in time is involved.

(5) Joint projects involving the relocation of a line of railroad which does not disrupt service to shippers.

(6) Reincorporation in a different State.

[45 FR 62999, Sept. 23, 1980, as amended at 45 FR 74489, Nov. 10, 1980]

§ 1111.10 General policy statement for mergers or controls of at least two Class I railroads.

(a) *General.* The Interstate Commerce Commission encourages private industry initiative that leads to the rationalization of the Nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation. However, the Commission does not favor consolidations through the exercise of managerial and financial control if the

controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand. Furthermore, the Commission does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

(b) *Consolidation criteria.* The Commission's consideration of mergers or controls of at least two Class I railroads is governed by the criteria prescribed in 49 U.S.C. 11344 and by the rail transportation policy set forth in 49 U.S.C. 10101a.

(1) Section 11344 directs the Commission to approve consolidations which are consistent with the public interest. In examining a proposed transaction, the Commission must consider, at a minimum: (i) The effect on the adequacy of transportation to the public; (ii) the effect of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (iii) the total fixed charges that would result; (iv) the interest of affected carrier employees; and (v) the effect on competition among rail carriers in the affected region.

(2) The Commission must also consider the impact of any transaction on the quality of the human environment and the conservation of energy resources.

(c) *Public interest considerations.* In determining whether a transaction is in the public interest, the Commission performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public. The Commission will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that pose fewer potential dangers.

(1) *Potential benefits.* Both the consolidated carrier and the public can benefit from a consolidation if the result is a financially sound competitor better able to provide adequate service on demand. This beneficial result can occur if the consolidated carrier is able to realize operating efficiencies and increased marketing opportunities. Since consolidations can lead to a reduction in redundant facilities and thereby to an increase in traffic density on underused lines, operating efficiences may be realized. Furthermore, other than contractual arrangements, such as for joint use of rail facilities or run-through trains, consolidations are the only feasible way for rail carriers to enter many new markets. In some markets where there is sufficient existing rail capacity the construction of new rail line is prohibitively expensive and does not represent a feasible means of entry into the market.

(2) *Potential harm.* There are two potential results from consolidations which would ill serve the public—reduction of competition and harm to essential services. In analyzing these impacts, we must consider, but are not limited by, the policies embodied in antitrust laws.

(i) *Reduction of competition.* If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. Even if the consolidating carriers do not serve the same market, there may be a lessening of potential competition in other markets. While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. The Commission recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers. The Commission's competitive analysis depends on the relevant market(s). In some markets the Commission's focus will be on the preservation of effective intermodal competition, while in other markets (such as long haul movements of bulk commodities) effective intramodal competition may also be important.

(ii) *Harm to essential service.* Consolidations often result in shifts of market patterns. Sometimes the carrier losing its share of the market may not be able to withstand the loss of traffic. In assessing the probable impacts, the Commission's concern is the preservation of essential services, not the survival of particular carriers. A service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available.

(d) *Conditions.* The Commission has broad authority to impose conditions on consolidations, including those that might be useful in ameliorating potentially anticompetitive effects of a consolidation. However, the Commission recognizes that conditions may lessen the benefits of a consolidation to both the carrier and the public. Therefore, the Commission will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (1) Is shown to be related to the impact of the consolidation; (2) is designed to enable shippers to receive adequate service; (3) would not pose unreasonable operating or other problems for the consolidated carrier; and (4) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. Moreover, the Commission believes that indemnification is ordinarily not an appropriate remedy in consolidation proceedings. Indemnification conditions can be anticompetitive by requiring the consolidated carrier to subsidize carriers who are no longer able to compete efficiently in the marketplace.

(e) *Inclusion of other carriers.* The Commission will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(f) *Labor protection.* The Commission is required to provide applicants' employees affected by a consolidation with adequate protection. Similarly situated employees on the applicants' system should be given equal protection. Therefore, absent a negotiated agreement, the Commission will provide for protection at the level mandated by law (49 U.S.C. 11347), unless it can be shown that because of unusual circumstances more stringent protection is necessary to provide employees with a fair and equitable arrangement. The Commission will review negotiated agreements to assure fair and equitable treatment of affected employees.

(g) *Cumulative impacts and crossover effects.* The Commission recognizes that events can occur during its consideration of a consolidation that can have an effect on various of the concerned parties. However, the Commission is mindful of the need to meet its statutory deadline and make timely administratively final decisions. Therefore, the Commission will not reopen pending proceedings in order to assess the impact of potential or hypothetical combinations or transactions. The proper forum for considering cumulative impacts and crossover effects is in a later proceeding. In this manner, consideration will be limited to the impacts of transactions which have already been approved and are, therefore, reasonably certain to occur. Futhermore, the Commission will have the benefit of its findings from the prior proceeding to identify more precisely the impacts of that transaction. Proceedings will remain manageable in scope and size, statutory time limits will be met, and all parties will be assured of timely, administratively final decisions.

(h) *Public participation.* To assure a fully developed record on the impacts of a proposed railroad consolidation, the Commission encourages public participation from Federal, State, and local government departments and agencies, affected shippers and carriers, and other interested persons.

[46 FR 9113, Jan. 28, 1981]

§ 1111.11 Special intermodal authority.

(a) *Application*—(1) *Who may file.* An application under this section must be filed by a rail carrier, or a person controlled by or affiliated with a rail

carrier, together with one or more affected shippers.

(2) *Contents.* An application will consist of two elements: Identification of the applicants and verified statements presenting the case for special intermodal authority.

(i) *Identification of the applicants.* (A) Each applicant must give its full and correct name and its business address.

(B) Each applicant must indicate whether it is an individual, firm, partnership, corporation, company, association, joint stock company, trustee, receiver, assignee, or other personal representative, and the trade name or style, if any, under which applicant is doing business.

(C) Each applicant must indicate whether it is a rail carrier subject to Title 49, United States Code.

(D) Each applicant must give the name, title and business address of the persons to whom correspondence with respect to the application should be addressed.

(E) Each applicant must indicate whether it, or any of its subsidiaries, is affiliated with a motor carrier subject to Title 49, United States Code. If so, applicant must provide information regarding the nature and scope of its authority.

(F) The rail carrier must indicate the State or States in which any part of its property is located and provide a map of its rail system.

(G) The shipper applicant(s) must indicate the type and duration of business conducted on the allegedly impaired rail line and particulars of its present and prospective activities which have or may have a relation to transportation subject to Title 49, United States Code.

(H) Applicants must indicate the name of the entity which will exercise the special intermodal authority, and all of the above identifying information for that entity.

(I) Applicants must specify the location of the allegedly impaired rail line by giving the endpoints and listing all towns along the line. Applicant shall also indicate where on its rail line it intends to interline the traffic.

(ii) *Verified statements.* Applicants must demonstrate both presently impaired rail service and inadequate motor common carrier service which results in the serious failure of the rail carrier serving the shippers to meet the rail equipment or transportation schedules of shippers or which otherwise seriously fail to provide adequate normal rail service required by shippers and which shippers would reasonably expect the rail carrier to provide. In making their case applicants can offer evidence as to: (A) The nature, duration, and extent of the impaired rail service, (B) the reasons why motor common carrier service to shippers is inadequate, and (C) the rail equipment and transportation schedule needs of the shippers. Shippers certification that there is presently impaired rail service and inadequate motor common carrier service will create a rebuttable presumption that special intermodal authority is necessary.

(3) *Filing requirements.* The original and five copies must be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423. Each application shall be titled "IM—[number]" [2] followed by the name of the railroad applicant, a shipper applicant, and the area to be served. This caption shall also be printed on the front of the enveloped containing the application.

(b) *Service and notice.* (1) A copy of the application shall at the time the application is filed be served on:

(i) The rail carrier providing the allegedly impaired rail service, and

(ii) The designated State agency(s) in which the allegedly impaired rail line is located.

(2) A notice shall be published in a local newspaper of general circulation on or before the application's filing date setting forth:

(i) The full and correct names and addresses of the applicants,

(ii) The location of the allegedly impaired rail line by giving the endpoints and listing all towns along the line,

[2] Applicants should insert, as the "IM" number, the "AB" number given to applicant rail carrier for use in abandonment proceedings. These numbers are listed in Appendix B of 49 CFR Part 1121. No. "Sub-No." is required.

(iii) The identification of the person(s) who will be exercising the special intermodal authority,

(iv) The identification of the date on which the application will be filed with the Commission and

(v) An explanation that protests in the form of an original and five copies of verified statements, must be filed with the Commission within 10 days of the filing of the application.

(3) The application shall contain a certificate indicating that the above parties were served and a notice complying with the listed provisions was published.

(c) *Protests*—(1) *Filing requirements.* The original and five copies of a protest to an application filed under 49 CFR 1111.11(a) shall be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423, within 10 days of filing of the application. The protest shall bear the same caption (IM prefix, number and title) as that appearing on the application. This caption shall also be printed on the front of the envelope containing the application.

(2) *Contents.* The protest shall be in the form of verified statements and shall demonstrate why there is no presently impaired rail service and/or inadequate motor common carrier service which results in the serious failure of the rail carrier serving the shippers to meet the rail equipment or transportation schedules of shippers or which otherwise seriously fail to provide adequate normal rail services required by shippers and which shippers would reasonably expect a rail carrier to provide.

(d) *Commission action.* The Commission shall issue a decision approving or disapproving the application within 30 days of its filing.

(e) *Revocation of the special intermodal authority*—(1) *Who may file.* A rail carrier or motor carrier which has existing authority within the area covered by the special intermodal authority and which believes that the circumstances requiring the special authority no longer exist may petition the Commission for an order revoking the authority.

(2) *Contents.* The petition must specifically show what circumstances have changed and how those changes alleviate the need for the authority.

(3) *Filing requirements.* The original and five copies of the petition must be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423. The petition shall bear the same caption (IM prefix, number and title) as that appearing on the original application. This caption shall be printed on the front of the envelope containing the application.

(4) *Service.* A copy of the petition must be served concurrently on the original applicants.

(5) *Replies.* Applicants will have 30 days to respond to the petition. An original and five copies of any replies must be filed with the Commission. A copy must also be served on petitioner(s).

(6) *Commission action.* After consideration of the petition(s) and reply(s) the Commission shall issue an order either.

(i) Denying the petition, or

(ii) Revoking the special intermodal authority.

[45 FR 77033, Nov. 21, 1980, as amended at 45 FR 79488, Dec. 1, 1980; 46 FR 48216, Oct. 1, 1981]

Subpart B—Acquisition Procedures for Lines of Railroads in Reorganization

AUTHORITY: 49 U.S.C. 10321, secs. 5 and 17 of Pub. L. 96-101, and 5 U.S.C. 553.

SOURCE: 45 FR 6108, Jan. 25, 1980, unless otherwise noted.

§ 1111.20 Types of transactions.

Transactions proposed under the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, Sections 5(b) and 17(b) are of 2 types: Major and Minor.

(a) A *major* transaction is a sale or transfer which will result in a major market extension.

(b) A *minor* transaction is any sale or transfer which will not result in a major market extension.

§ 1111.21 Identifying information.

(a) *All applications* filed under Pub. L. 96-101, Sections 5(b) and 17(b), shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in *all* applications seriatim:

(1) Summary. A narrative description of the proposed transaction shall serve as an introduction to the application. It shall include appropriate references to supporting exhibits and statements in the application and shall generally discuss the following matters:

(i) A summary of the proposed transaction including the name of applicants.

(ii) The proposed time schedule for consummation of the proposed transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, *e.g.,* operating economies, elimination of excess facilities, extension of markets, improved financial viability.

(iv) The nature and amount of any new securities or other financial arrangements.

(v) A summary of the applicant's public interest justifications in support of the application indicating how the proposed transaction is consistent with the public interest, or why the public convenience and necessity permits issuance of a certificate, with particular regard to:

(A) The financial consideration involved in the proposed transaction, including an explanation of economies, if any, to be effected in buyer's operations, and increases, if any, in buyer's traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from consummation of the proposed transaction.

(B) The effect of the proposed transaction upon adequate rail and other transportation services to the public.

(C) The effect of the increase, if any, of total fixed charges to buyer resulting from the proposed transaction.

(D) The effect of any guaranty or assumption of payment of dividends or fixed charges contemplated by buyer in the proposed transaction.

(E) The effect of the proposed transaction upon buyer's and seller's employees.

(F) The effect of the proposed transaction on the remaining system and operations of the bankrupt carrier.

(vi) Any other supporting or descriptive statements applicant deems material.

(vii) An opinion of counsel of applicant that the transaction described in the application meets the requirements of the law and will be legally authorized and valid, if approved by the Commission and the bankruptcy court, with specific reference to any specifically pertinent provisions of applicant's charter or articles of incorporation.

(2) Identification of applicant carriers.

(i) Indicate the full and correct name of each applicant carrier and business address (street and number, city, State, and zip code).

(ii) Indicate the State or States in which any part of the property of each applicant carrier is situated.

(iii) Map (Exhibit 1). Submit a general or key map indicating clearly, in separate colors, or otherwise, the line or lines of buyer (if any) in their true relation to the lines to be acquired from seller, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the maps accompanying each application, 20 unbound copies of the map shall be filed with the Commission.

(3) Explanation of the transaction.

(i) Describe the nature of the transaction (*e.g.,* purchase, joint purchase, trackage rights, etc.), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

(ii) Agreement (Exhibit 2). Submit a copy of any contract or other written instrument entered into, and approved by the bankruptcy court, pertaining to

the transaction covered by the application.

(iii) Court order (Exhibit 3). Submit a copy of the court order approving the agreement of transfer and its filing with the Commission.

(iv) State whether the property involved in the proposed transaction includes all the property of the seller and, if not, specifically describe what property is included in the proposed transaction.

(v) Describe in detail the principal routes and terminals of the lines involved, the principal points of interchange on the routes, and the amount of main line mileage and branch line mileage involved.

(vi) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

(vii) Labor impact (Exhibit 4). Furnish the following information with respect to impacts on *railway* labor only:

(A) A copy of any agreement or agreements with employee organizations entered into as a result of the proposed transaction.

(B) For all personnel covered by pension plans supplemental to the Railroad Retirement Act, a list of the pension plans currently in effect, indicating whether or not they are funded, the extent of any unfunded liability, and the time required to bring the plans to a fully funded level.

(C) The number, location, craft or class and classification of all positions of the applicant carriers which under the proposed transaction are to be established, consolidated, created or transferred (including the point or points from and to which positions will be transferred).

(D) For each of the changes specified in item (C), the cost and savings to the railroad(s) in effectuating such changes, listed for each of the three years following consummation of the proposed transaction and the amount by craft or class and classification to which such costs and/or savings will be attributed.

(E) The date or dates on which each job abolishment, transfer, consolidation, or creation set forth under item (C) above is to be effectuated and a statement as to whether or not implementing agreements have been negotiated with appropriate labor organizations with respect to such proposed changes.

(F) The annual net change in employment for applicant carriers by craft or class and classification for the last 6 years preceding the filing of the application.

(viii) Energy data (Exhibit 5). Submit information and data with respect to energy consumption prepared in accordance with the ICC *Implementation of the Energy Policy and Conservation Act of 1975,* 49 CFR Part 1106.

(b) All applications proposing *major* transactions, as defined in § 1111.20, shall also include the following information:

(1) Identification of buyer.

(i) If buyer is a corporation indicate:

(A) Date of incorporation[1] and Government, State, or territory of incorporation.

(B) Name and business address of directors.

(C) Name, title and business address of officers.

(D) Name and business address of 10 principal stockholders as of last record date and their respective holdings.

(E) Charter (Exhibit 6). One copy of the charter or articles of incorporation, and the bylaws and amendments thereof, of buyer duly certified by the appropriate public officer.

(ii) If buyer is a partnership indicate:

(A) Date on which partnership was formed, and State and county in which it was formed.

(B) Name and business address of all present partners, including limited or silent partners and their respective interests.

(C) Partnership articles (Exhibit 7). A properly authenticated copy of the articles of partnership, if any.

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[1] If the applicant is incorporated or organized under the laws of, or authorized to operate in, more than one State, territory, or Federal district, give all pertinent facts as to such incorporations, organization, or authorization.

(iii) If buyer is an association or other form of organization, other than a corporation indicate:

(A) Date of organization and place of organization.

(B) Full description of the nature and objectives of the organization.

(C) Name, title, and business address of officers and directors, or trustees.

(D) Name and business address of applicant's 10 principal stockholders or owners.

(E) Documents of association (Exhibit 8). A properly authenticated copy of articles of association, trust agreement, or other similar documents.

(iv) If buyer is a trustee, receiver, assignee, or a personal representative of the real party in interest, provide:

(A) The name and address of the court, if any, under the direction of which buyer is acting.

(B) The nature of the proceedings, if any, in which buyer was appointed.

(C) With respect to the real party in interest, indicate its full and correct name, business address (street and number, city, State, and zip code), type of entity, and its carrier status.

(D) Court appointment (Exhibit 9). A properly authenticated copy of the order of the court or instrument appointing each trustee, receiver, assignee, or personal representative which is a party to the transaction.

(v) Other authorizing document (Exhibit 10). If paragraphs (b)(1) (i), (ii), (iii), and (iv) of this section are not applicable, indicate identity, structure, statutory or charter powers of buyer, and submit appropriate organizational or authorizing documents, or indicate why none is available or necessary.

(vi) Corporate chart (Exhibit 11). Submit a corporate chart indicating all relationships between buyer and all affiliates and subsidiaries and also companies controlling buyer directly, indirectly or through another entity (each chart shall indicate the percentage ownership of every company on the chart by any other company on the chart). For each company include a statement indicating (A) any common officers or directors for every entity on the chart (with reference to the Commission decision by docket number and date authorizing the holding of such positions, or an explanation of why such authorization was not required) and (B) whether each company is a non-carrier or carrier (by railroad, motor, or water, including any Commission certificate or permit number, and the docket number of any proceeding pending before the Commission). Such information may be referenced through notes to the chart.

(vii) If buyer is not a carrier, indicate (A) the type of business in which it is engaged, (B) the length of time so engaged, and (C) the particulars of its present and prospective activities which have a relation to transportation subject to 49 U.S.C. Subtitle IV.

(viii) Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed in response to prior instructions, through holding companies, ownership of securities, or otherwise, between (A) buyer and any carrier or person affiliated with any carrier or (B) a person affiliated with buyer and any carrier or person affiliated with any other carrier. Indicate the nature and extent of such relationships, if they exist, and, if a buyer owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, par value of each class of securities held, and the buyer's percentage of total ownership.

(ix) State the amount of acquiring buyer's outstanding capital stock, by classes, and in connection therewith the par value or stated value of each share, its voting rights, if any, the total number of stockholders of record, and the voting rights of all security holders.

(x) Annual reports (Exhibit 12). Submit a properly authenticated copy of the buyer's annual report, *if any*, to stockholders or shareholders for each of the two calendar or fiscal years preceding the filing of the application.

(2) Explanation of the transaction.

(i) Filing resolutions (Exhibit 13). Submit a copy of all resolutions of directors of buyer, authenticated by a proper executive officer, authorizing (A) the proposed transaction and (B) where applicable, the filing of the application with the Commission for its

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approval and authorization. If the charter or by-laws of the buyer require approval of the stockholders, submit a copy of the resolution of stockholders authorizing the proposed transaction and the filing of the application. All resolutions are to be accompanied by sufficient transcripts of the minutes of meetings of the directors or stockholders of the buyer to show the number of shares entitled to vote, the number of shares voted for and against the resolutions, and the numbers of shares/votes required to adopt the resolution.

(ii) Executing resolutions (Exhibit 14). Submit a copy of all resolutions of stockholders or directors of the buyer, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant, designating by name and for that purpose the executive officer by whom the application is signed and verified, and filed on behalf of the applicant. For purposes of exhibits 13 and 14, in the event the resolutions of stockholders have not been obtained at the time the application is filed then such resolutions shall be obtained as soon as feasible, but not later than the next regularly scheduled stockholders' meeting. A copy of such resolutions shall be filed with the Commission within 30 days following such meeting.

(iii) Other evidence of authorization (Exhibit 15). If the buyer is an organization other than a corporation, submit documentary evidence showing authorization and designation of the individual or individuals signing, verifying, and filing on behalf of the buyer.

§ 1111.22 Traffic data.

The information required in this section should only be filed as part of an application proposing a *major* transaction.

(a) Density charts (Exhibit 16). Gross ton-mile traffic density charts shall be filed for buyer containing a map graphically showing principal lines (those handling 1 million gross ton-miles or more per year) and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between major freight yards and terminals, including major intramodal and intermodal interchange points, using the corporate or political subdivision name of the points shown as well as the railroad station name. The mileage of each segment of line shall be provided, and should be shown on the chart. Data shown in the density chart shall be for the latest available full calendar year preceding the filing of the application.

(b) Carload interchange data (Exhibit 17). Revenue carload interchange data between buyer and connecting line-haul rail carriers or water carriers (deleting intermediate switching railroads, if any) shall be in a table setting forth the gateway involved, each connecting line-haul railroad or water carrier, and for each connecting railroad or water carrier the number of interchange carloads originating on buyer's lines, the number of interchange carloads terminating on buyer's lines, the overhead traffic delivered or received by buyer, and a separate total of overhead traffic and the total cars interchanged. Gateways to be listed shall be those handling 5,000 or more revenue carloads or 5 percent of total revenue carloads annually, whichever is smaller. Where two or more gateways are contiguous or nearly contiguous, they should be totalled (as examples, Dallas-Fort Worth, Minneapolis-St. Paul, Omaha-Council Bluffs, et cetera). If necessary, such grouped gateways may also be shown separately in supporting tables. Data shown in Exhibit 17 shall be for the latest available full calendar year preceding the filing of the application. It shall be organized as shown in the table in the Appendix.

(c) Carload origin and destination (Exhibit 18). An exhibit containing revenue carload origin and destination data for the latest available full calendar year preceding the filing of the application, shall list the following:

(1) Points of origin of 5,000 or more revenue carloads or 5 percent or more of buyer's total originated revenue carloads annually, whichever is smaller, broken down to show originations of local and interline carloads for each point, and

(2) Points of destination of 5,000 or more revenue carloads, or 5 percent or

more of buyer's total terminated revenue carloads annually, whichever is smaller, broken down to show terminations of local and interline carloads for each point. This data shall include all of buyer's carloads at each point originated or terminated, as the case may be, by a line-haul, terminal, or switching railroad or by a motor carrier performing pickup or delivery service, *except* where such information would identify a specific shipper(s) or a specific receiver(s).

(3) The information provided in (1) and (2) above should be provided from seller for traffic moving over the line to be sold.

(d) Freight car fleet (Exhibit 19). A summary table shall show the freight car fleet cars owned and leased by buyer for the latest available full calendar year preceding the filing of the application, the number of box, flat (including rack cars), gondola, open hopper, covered hopper, refrigerator, miscellaneous, and total number of cars owned and leased, and the aggregate capacity of these cars. The same information shall be provided for the seller, including the change expected as the result of the proposed transfer.

(e) Revenue freight traffic (Exhibit 20). A table shall show the buyer's revenue freight traffic, indicating for the latest available full calendar year preceding the filing of the application, (1) the number of local, interline originated, interline terminated, overhead, and total carloads, (2) total revenue tons, (3) revenue ton-miles, and (4) total freight revenue.

(f) Commodity revenue (Exhibit 21). A table shall show commodity group revenue (at the two-digit level of the Standard Transportation Commodity Code) for the buyer's 5 largest revenue producing commodity groups as a percentage of total revenue for the latest available full calendar year preceding the filing of the application, indicating the 5 largest commodity groups, the revenues attributable to each group and the percentage of that group's revenue as it relates to total revenue.

(g) Commodity tonnage (Exhibit 22). For the *commodity groups shown in the table required in (f) above,* a table shall show commodity group tonnage as a percentage of total tonnage, for the latest available full calendar year preceding the filing of the application, indicating the various commodity groups, the tonnage attributable to each group and the percentage of that group's tonnage as it relates to total tonnage.

(h) Market Study. For the buyer, a narrative discussion shall identify the markets which will be affected by the proposed acquisition, the traffic expected to be generated and/or recovered, and the levels of business expected on the line at issue.

§ 1111.23 Operational data.

For *all* transactions: Operating Plan (Exhibit 23). Submit a description of the proposed operating plan to be effectuated upon approval of the transaction. This shall include information projected for the time required to complete rehabilitation, upgrading or other major operational changes following consummation of the proposed transactions, and describe the following with particularity:[2]

(a) Any significant changes in patterns of service.

(b) Traffic level and density on lines proposed for joint operations.

(c) The extent to which deferred maintenance or delayed capital improvements apply to any line of railroad or equipment involved, the Federal Railroad Administration Class level of the line involved, and the schedule for eliminating such deferrals. Include details of buyer's general system rehabilitation, specific rehabilitation relating to the transaction, and upgrading plans including proposed yard and terminal modifications, together with an estimate of anticipated service improvements or operating economies associated with such projects.

(d) Impact on the use of yards or shop facilities and any necessary modifications to yards or terminals.

(e) Impacts on commuter or other passenger service operated over the line being acquired.

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[2] For the purpose of completing this application, buyer is authorized to obtain the data necessary to complete this exhibit from the trustee and/or the directed rail carrier.

(f) Operating economies, which include, but are not limited to, estimated savings.

(g) Any associated discontinuances or abandonments.

§ 1111.24 Financial information.

(a) The following information shall be provided for all *major* transactions:

(1) Balance sheets (Exhibit 24). General balance sheets, for the most recent full calendar year as appropriate, of the following:

(i) Buyer on a corporate entity basis.

(ii) Buyer's parent company on a corporate entity basis.

(iii) Buyer and subsidiaries on a consolidated basis.

(2) *Pro forma* balance sheets (Exhibit 25). Submit a *pro forma* balance sheet statement giving effect to the proposed transaction for the most recent full calendar year.

(i) A procedure utilizing three columns should be followed. The *first* column should show buyer's actual balance sheet on a corporate entity basis for the latest available 12 month period, the *second* column should show the adjustments necessitated by the purchase, and the *third* column is a compilation of the first two columns into a *pro forma* balance sheet.

(ii) If the parent company (if any) of the buyer is affected, a similar balance sheet shall be filed for each.

(iii) All adjustments to these balance sheets shall be supported in footnotes to the appropriate balance sheet.

(iv) A *pro forma* balance sheet shall be submitted for the number of years following consummation necessary to effect the operating plan.

(3) Income statements (Exhibit 26). Income statements, for the most recent full calendar year, as appropriate, of the following:

(i) Buyer on a corporate entity basis.

(ii) Buyer's parent company on a corporate entity basis.

(iii) Buyer and subsidiaries on a consolidated basis.

(4) *Pro forma* income statements (Exhibit 27). Submit a *pro forma* income statement showing buyer's estimate of revenues, expenses, and net income for at least each of the 3 years following consummation of the transaction.

(i) A procedure utilizing three columns should be followed. The *first* column should show buyer's actual income statement on a corporate entity basis for the latest available 12-month period, the *second* column should show the adjustments necessitated by the purchase, and the *third* column is a compilation of the first two columns into a *pro forma* income statement.

(ii) If the parent company (if any) of the buyer is affected, a similar statement shall be filed for each.

(iii) All adjustments to these income statements shall be supported in footnotes to the appropriate income statement.

If the operating plan requires more than three years to be put into effect, the *pro forma* income statement shall be prepared for as many years as necessary to implement fully the operating plan.

(b) The following information shall be provided for all *minor* transactions:

(1) Balance sheets—minor (Exhibit 28). General balance sheets for the latest 6-month period for buyer on corporate entity basis.

(2) Income statements—minor (Exhibit 27). Income statements for the latest 6-month period for buyer on a corporate entity basis.

§ 1111.25 Procedures.

(a) *General.* (1) Any document filed with the Commission, including applications, pleadings, etc., shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Commission may require the submission of additional copies of any document previously filed by any party to the proceeding.

(2) The original and 20 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *minor* proceedings.

(3) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.

(b) *Application.* (1) There is a $700 filing fee to file an application with

the Commission under these procedures.

(2) Filing. (i) The original of all applications shall be signed in ink by the buyer and seller. If buyer is a partnership, all partners must sign; and if a corporation, association, or other similar form of organization, the signature should be that of its president, or such other executive officer having knowledge of the matters therein contained and duly designated for that purpose. Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any person controlling a buyer shall also sign the application.

(ii) The application shall be filed with Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(iii) Each copy of the application shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and the notarial seal may be omitted. In like manner where certified copies of documents are filed with the original application, conformed copies thereof, showing certification in stamped or typewritten form, will be sufficient to accompany the additional copies of the application.

(iv) All applications required to be filed with the Commission or served on designated persons shall include all exhibits, except as otherwise specifically noted.

(v) The buyer or seller shall submit such additional information to support its application as the Commission may require.

(vi) Buyer shall file concurrently with applications under Pub. L. No. 96-101 sections 5(b) and 17(b) all directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, acquire trackage rights, etc. All such applications will be considered under the schedule applicable to the initial application.

(vii) Exception to required exhibits. The original and one copy of Exhibit 16 shall be filed with the Commission. Copies shall be maintained at buyer's and seller's headquarters for inspection by interested parties. Buyer and seller must also file with the Commission one copy of a machine readable tape containing only the data shown in Exhibit 16. This tape will be returned to applicants when the Commission issues its decision, and no use of the tape will be made by the Commission other than for the purpose of adjudicating the application.

(3) In all applications, all of the direct testimony of buyer and seller, in the form of verified statements, shall be filed and served with each application.

(4) The application and all exhibits shall be considered part of the evidentiary record upon acceptance. Any portion of an application and exhibits will remain subject to motions to strike. However, no motion need be made to have the application and exhibits admitted to the evidentiary record.

(5) Service. The applicant shall serve a conformed copy of an application filed under these procedures by first class mail upon:

(i) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of each State in which any part of the properties of the applicant carriers involved in the proposed transaction is situated;

(ii) The United States Secretary of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW, Washington, D.C. 20590);

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission; and

(v) All parties to the bankruptcy court proceedings.

The application shall contain a certificate of service indicating that all persons so designated have been served a copy of the application.

(6) Application format.

(i) The application shall be in the same sequence as the information is requested in these procedures, and shall be numbered to correspond to the numbering in the procedures.

(ii) If any material required in the application would lend itself to being placed in an appendix, this should be done. The appendix and application shall be tabulated and cross-referenced in an index for ease in locating and referring to the information. The appendices shall be in the same sequence as the information is required by the regulations. The application should be bound, and it may be bound in more than one volume. If an application is more than one volume, the cover of each volume should be in a different color. The pages in each volume should begin with 1, and shall be sequentially numbered.

(iii) If a question arises regarding an interpretation of the information or format to be included in the application, including whether or not a transaction would result in a major market extension, the party may contact the Commission for assistance.

(iv) All filing, service, or other requirements of these procedures must be complied with when filing the application. Copies of the application filed with the Commission shall be marked in red "Special Railroad Acquisition Application" on the transmittal envelope or package.

(7) Acceptance or rejection of an application.

(i) The Commission shall accept a complete application by decision no later than 10 days after the application is filed with the Commission, and shall then publish a notice in the FEDERAL REGISTER. A complete application contains all information for all buyers and sellers required by these procedures, except as modified by advance waiver.

(ii) The Commission shall reject an incomplete application by serving a decision no later than 10 days after the application is filed with the Commission. The decision shall give specific reasons why the application was rejected, and specify where the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference, and the Commission will determine whether the resubmitted application conforms with all prescribed regulations. The resubmission or refiling of an application shall be considered a de novo filing for the purpose of computation of the time periods, provided that the resubmitted application is accepted.

(c) *Response to application.* (1) Written comments. (i) Written comments in support of or opposition to the proposed transaction must be filed no later than 30 days after an application is accepted.

(ii) Written comments must be verified.

(iii) Written comments shall be concurrently served by first class mail on:

(A) The applicants (at each address given in the application),

(B) The United States Secretary of Transportation, and

(C) The Attorney General of the United States.

(iv) Written comments must contain:

(A) The docket number and title of the proceeding.

(B) The name and address of the commenting party.

(C) The name, address, and telephone number of the commenting party's representative upon whom service shall be made.

(D) The commenting party's position (in support, opposition, or undetermined), and verified statements in support of that position.

(E) A list of conditions and modifications sought.

(v) All persons who file timely written comments shall be a party. In this event, no petition for leave to intervene need by filed.

(2) The Secretary of Transportation and Attorney General of the United States shall file written comments with the Commission within 40 days of the date of acceptance of the application. These comments shall contain the information in (c)(1)(iv) of this section. Copies of these comments shall be concurrently served by first class mail on:

(i) The applicants,

(ii) The parties to the proceeding who have filed written comments, and

(iii) The Attorney General of the United States or Secretary of Transportation (whichever applies).

(d) *Replies to comments.* (1) Applicant's verified replies to comments must be filed no later than 70 days after an application is accepted.

(2) If the Commission deems it necessary, a schedule for submission of briefs and replies will be set.

(e) The Commission will conclude the evidentiary proceeding, including requests for additional information, briefs and replies, and issue a final decision by the 180th day after the filing of the application, unless otherwise ordered.

(f) *Waiver or clarification.* (1) Upon petition of a prospective applicant, the Commission may waive or clarify a portion of these procedures, concerning the initial and directly related applications. A petition to waive *all* of the procedures will not be entertained.

(2) Petitions for waiver or clarification must be filed at least 20 days before the application is filed.[3]

(3) No replies to a petition for waiver will be permitted.

(4) All petitions for waiver, clarification or extension shall be ruled upon by the entire Commission.

(5) A petition for waiver or clarification must specify the sections for which waiver or clarification is sought and give the specific reasons why each waiver or clarification is necessary.

§ 1111.26 Definitions.

(a) *Applicant.* The parties initiating a transaction.

(b) *Applicant carriers.* Applicant, all carriers related to the applicant, and all other carriers involved in the transaction.

(c) *Major market extension.* A major market extension includes an end-to-end extension of buyer's routes and services and buyer's participation in additional through routes or joint rates. A major market extension may also significantly increase competition by (1) extending service into a new market or (2) providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (i) Whether or not a shorter route is involved, (ii) if the new route provides faster service, (iii) if this route extends into major markets, (iv) under what conditions the application is filed, and (v) if the route may make the railroad competitive. *See, Burlington Northern, Inc.—Control & Merger—St. L.,* 354 I.C.C. 616, 617 (1978).

(d) *Railroad.* Any common carrier by railroad as defined in 49 U.S.C. 10102 (17)-(18).

(e) *Buyer.* The buyer is the acquiring entity and all related carriers, in an acquisition.

(f) *Seller.* The seller is the bankrupt railroad.

[3] At the time of filing with the Office of the Secretary, 5 additional copies of petitions for waiver or clarification should be filed directly with Section of Finance, Office of Proceedings, Interstate Commerce Commission.

PART 1112—INTERLOCKING OFFICERS

Sec.

1112.1 Meaning of term "carrier."
1112.2 Application of regulations.
1112.3 Order of authorization.
1112.4 Application for order.
1112.5 Contents of application.
1112.6 Subscription and verification of application.
1112.7 Number of copies; form and style.
1112.8 General authority.
1112.9 Common control.
1112.10 Jointly used terminal properties.

AUTHORITY: Sec. 12, 24, Stat. 383, as amended; sec. 439, 41 Stat. 494, as amended; 49 U.S.C. 12, 20a.

SOURCE: 32 FR 20095, Dec. 20, 1967, unless otherwise noted.

§ 1112.1 Meaning of term "carrier."

The term "carrier" is used in this part as it is defined in section 20a(1) of the Interstate Commerce Act.

§ 1112.2 Application of regulations.

The regulations in this part apply to any person authorized by or undertaking for each of two or more carriers to perform the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land

and tax agent, or chief purchasing agent of a carrier.

§ 1112.3 Order of authorization.

An order of authorization will be granted only upon application therefor as hereinafter provided in this part.

§ 1112.4 Application for order.

An application for such an order may be made by any person in his own behalf.

§ 1112.5 Contents of application.

Each application shall state the following:

(a) The full name, occupation, business address, place of residence, and postoffice address of the applicant.

(b) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of and accurately describe the securities, owned or held by him, of each carrier for which he seeks authority to act. Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by him, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.

(c) Each and every position with any carrier:

Which is held by the applicant at the time of the application; and which he seeks authority to hold, together with the date and manner of his election or appointment thereto and, if he has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (An order authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize him to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(d) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in transportation by railroad subject to the act. If any such carrier neither operates nor owns any railroad, transportation by which is subject to the act, there shall be filed with the application, as a part thereof, a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date. When such copy has once been filed with the Commission, reference thereto, with amendments, if any, will suffice.

(e) Thereafter a full statement of pertinent facts relative to any carrier which does not make annual reports to the Commission, authorization for a position with which is sought.

(f) Full information as to the relationship, operating, financial, competitive, or otherwise, existing between the carriers covered by the requested authorization.

(g) Specify every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(h) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(i) Whether or not any other application for authority has been made in behalf of the applicant and, if so, shall show the date and finance docket number thereof, by who made, and the action thereon, if any.

(j) When application has been made in behalf of any person, a subsequent application by him need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

§ 1112.6 Subscription and verification of application.

The original application shall be signed by the individual applicant, and shall be verified under oath in substantially the following form:

State of————————
County of————, *ss.*
————————make —— oath and say—that————————hold—no position as officer or director of any carrier or other corporation except as indicated in the foregoing application, and that all of the statements contained therein are true and correct to the best of————knowledge and belief.

————————————————————
(Signature of applicant)

Subscribed and sworn to before me, a ————in and for the State and county above named, this————day of————, 19—.
[SEAL]

My commission expires ————————

§ 1112.7 Number of copies; form and style.

The original application and six copies thereof shall be filed with the Commission. Each copy shall bear the dates and signatures that appear on the original and shall be complete in itself, but the signatures in the copies may be stamped or typed and the notarial seal may be omitted. The application shall be submitted in typewritten or printed form, on paper not more than 8½ inches wide and not more than 12 inches long, with a left-hand margin of 1½ inches, and if typewritten, the impression must be on only one side of the paper, and must be double spaced.

§ 1112.8 General authority.

Any person, who has been or shall hereafter be authorized to hold positions with a carrier or with a company or companies subsidiary thereto or affiliated therewith, may include in any application made by him pursuant to the foregoing regulations in this part a request for an order authorizing him to hold generally, in addition to the positions so specifically authorized, a directorship or any office or offices with the first-mentioned carrier and all companies subsidiary thereto or affiliated therewith, or the properties of which are operated or used by the carrier, either separately or jointly, with other carriers. Like general authority may be applied for by the first-mentioned carrier in behalf of any person or persons to whom such specific authority has heretofore been granted: *Provided,* That such general authority may not be applied for by such carrier when the person for whom authority is desired holds a position or positions with any carrier or carriers not subsidiary to or not affiliated with the first-mentioned carrier, or the properties of which are not operated or used by the first-mentioned carrier, either separately or jointly with other carriers. Every carrier application shall be verified by an executive officer having knowledge of the facts.

§ 1112.9 Common control.

It shall not be necessary for any person to secure an order of authorization under the foregoing provisions to hold the position of officer or director of two or more carriers, if such carriers are operated under common control or management, either.

(a) Pursuant to approval and authority of the Commission granted under section 5 of the act, or

(b) Pursuant to an exemption authorized by the Commission under 49 U.S.C. 10505, or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

[35 FR 7651, May 16, 1970, as amended at 44 FR 75386, Dec. 20, 1979]

§ 1112.10 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is hereby relieved from the foregoing provisions to the extent that he may also hold a directorship and any other position to which he may be elected or appointed with a terminal railroad the properties of which are operated or used by such carrier jointly with other carriers.

[35 FR 7651, May 16, 1970]

PART 1113—GUARANTY OF LOANS TO CARRIERS BY RAILROAD

Sec.
1113.1 Form and content of application.
1113.2 Required exhibits.
1113.3 Fees.
1113.4 Execution and filing of application.
1113.5 General instructions.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended, secs. 501-510, 72 Stat. 568-570; 49 U.S.C. 12, 1231-1240.

SOURCE: 32 FR 20095, Dec. 20, 1967, unless otherwise noted.

§ 1113.1 Form and content of application.

The application and supporting exhibits shall conform to Rule 15 of the General Rules of Practice (§ 1100.15 of this chapter) and shall show in the order indicated and by section numbers and letters corresponding to those used in this part the following:

(a) As to the carrier applicant and the transaction:

(1) Full and correct name and principal business address.

(2) Date of incorporation, or organization if not a corporation, and government, state, or territory under the laws of which it was incorporated or organized. If carrier applicant is a trustee, receiver, assignee, or other fiduciary, the name and address of the court, if any, under the direction of which the carrier applicant is acting, and the nature of the proceeding, if any, in which applicant was appointed. If carrier applicant is a partnership, an association, or other form of organization other than a corporation, a full description of the organization should be furnished.

(3) Name, title, and address of the person to whom correspondence regarding the application should be addressed.

(4) Brief description of the loan and its purpose or purposes, including statements of (i) the total amount of the loan, (ii) the purpose or purposes for which the loan proceeds will be used, (iii) the maturity date or dates, (iv) description of the security, if any, for the loan, including applicants' opinion of the value of any collateral and the basis for such opinion, (v) the date or dates on which carrier applicant desires the funds to be made available, (vi) the rate of interest, (vii) estimated total expenses in connection with the loan, including detail as to expenses estimated for legal, accounting, and engineering services, printing and engraving, trustees, fees, state and federal taxes, and commissions and discounts; and (viii) the portion of the loan concerning which guaranty by the Commission is sought.

(5) Concerning the necessity for the guaranty sought:

(i) Statement on behalf of the applicant carrier that it has endeavored to obtain a loan or loans for the purpose or purposes proposed without a guaranty by the Commission in connection therewith, but has not been able to obtain a loan therefor upon reasonable terms.

(ii) Information as to the applicant carrier's efforts to obtain the needed financing without a guaranty thereof by the Commission, and as to the results of such efforts. (See § 1113.2(b)(8) as to exhibits on this subject.)

(6) Statement, in summary form, showing the carrier applicant's financial obligations to, or claims against, the United States, if any, as of date of application, or latest available date, listed as to (i) balance on any direct loans, (ii) balance on any loans under which the United States is guarantor, (iii) status of any claims under litigation, and (iv) any other debits or credits existing between the carrier applicant and the United States, showing the department or agency involved in such loans, claims and other debts.

(b) As to the lender or lenders:

(1) Full and correct name and principal business address.

(2) Names and addresses of principal executive officers and directors, or partners.

(3) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to the lender to make the loan and to accept the mortgage or other obligation evidencing the loan.

(4) Brief statement of the circumstances and negotiations leading to the agreement by the lender to make the proposed loan, including the name and address of any person or persons, other than directors, officers, partners, or employees of the carrier applicant, representing or purporting to represent the carrier applicant in connection with such negotiations.

(5) Brief statement of the nature and extent of any affiliation or business relationship between the lender and any of its directors, partners, or principal executive officers, on the one hand, and, on the other, the carrier applicant and any of its directors, partners, or principal executive offi-

cers, or any person or persons whose name is required to be furnished under paragraph (b)(4) of this section.

(6) Full and complete statement of all sums paid or to be paid and of any other consideration given or to be given by lender in connection with the proposed loan, including with respect thereto: (i) Name and address of each person to whom the payment is made or to be made, (ii) the amount of the cash payment, or the nature and value of other consideration, (iii) the exact nature of the services rendered or to be rendered, (iv) any condition upon the obligation of the lender to make such payment, and (v) the nature of any affiliation, association, or prior business relationship between any person named in answer to paragraph (b)(6)(i) of this section and the lender or any of its directors, partners, or officers.

§ 1113.2 Required exhibits.

There shall be filed with and made a part of each application, and with each copy thereof, the exhibits required in this section, except that exhibits filed with and made a part of any related application filed with the Commission under section 20a of the act for authority to issue securities in connection with the proposed loan may be incorporated in and made part of the loan application by reference.

(a) The following exhibits are required concerning the carrier applicant:

(1) As Exhibit 1, with the original application but not with copies thereof, copy of charter or articles of incorporation, with amendments to date, duly certified by the appropriate public officer; and copy of by-laws, with amendments to date. If carrier applicant is not a corporation, copy of articles of agreement, or association, or trust agreement, evidencing organization, or if carrier applicant is a trustee, receiver, assignee, or other fiduciary, copy of duly certified order of the court, or instrument of appointment.

(2) As Exhibit 2, the following: (i) Copies of all resolutions of directors authorizing the proposed loan; (ii) if the charter or by-laws require approval by stockholders, copies of resolutions of stockholders authorizing such loan, all such resolutions of stockholders to be accompanied by sufficient transcripts of the minutes of their meetings to show the number of shares voted for and against the resolutions, and the number of share-votes required to adopt the resolution; (iii) copies of resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by a proper officer of carrier applicant, designating by name and for that purpose the executive officer by whom the application is signed, verified, and filed on behalf of the carrier applicant; (iv) if carrier applicant is an association or other organization except a corporation, documentary evidence showing authorization of the proposed loan and designation of the individual signing, verifying, and filing the application on behalf of the carrier applicant; and (v) if the carrier applicant is a trustee, receiver, assignee, or other fiduciary, a certified copy of the order, if any, of the court having jurisdiction, authorizing the proposed loan, and the filing of the application.

(3) As Exhibit 3, preliminary opinion of counsel that he is familiar with the corporate or other organizational powers of the carrier applicant, that the carrier applicant is authorized to make the application, and that when proper corporate or other organizational action has been taken and the obligations executed, and security delivered as contemplated by the application, such obligations will constitute the valid and subsisting obligations of the carrier applicant. Such opinion should also cover the validity and lien of each item of any collateral offered.

(4) As Exhibit 4, a map of carrier applicant's existing railroad, and a map and profile of the line or lines to be constructed, if any.

(5) As Exhibit 5, statement showing miles of line owned; miles operated; number of units of locomotives, freight cars, and passenger cars owned and leased; principal commodities carried; and identification of the 10 most important industries served.

(6) As Exhibit 6, statement as to whether any railroad affiliated with the carrier applicant has applied for or received a loan guaranty under this

part. If such an affiliate has applied for or received such a guaranty, full particulars should be given.

(7) As Exhibit 7, statement showing total dividends declared and total dividends paid for each of the last 10 calendar years and for each month of the current year to latest available date.

(8) As Exhibit 8, a copy of general balance sheet as of latest available date, but as of a date not earlier than the end of the second month preceding date of filing of the application, in form and detail as required in schedules 200A and 200L of the Commission's annual report Forms A or C, together with the following supporting schedules:

(i) Particulars of loans and notes receivable in form and detail as required in schedule 203 of annual report Form A for the Class I railroads; and for the Class II similar detail for every item in excess of $25,000,

(ii) Particulars of investments in other companies in form and detail as required in schedules 205 and 206 of annual report Form A, or schedules 1001 and 1002 of Form C, as appropriate,

(iii) Particulars of balance in account 743, Other Deferred Charges, in form and detail as required in annual report Form A, schedule 217, or schedule 1703 of Form C, as appropriate,

(iv) Particulars of loans and notes payable in form and detail required in schedule 223 of annual report Form A, or schedule 1701 of Form C, as appropriate, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security, if any, therefore,

(v) Particulars of long-term debt in form and detail required in schedules 218 and 219 of annual report Form A, or schedules 670, 695, 901, 902 and 1702 of Form C, as appropriate, together with a list of mortgages, pledges, and other liens, including a brief statement concerning each, indicating the property or securities encumbered, the mortgage limit per mile, if any, particulars as to priority, as well as to whether "open", "closed", or "open end",

(vi) Particulars of balance in account 784, Other Deferred Credits, in form and detail as required in schedule 226 of annual report Form A, or schedule 1704 of Form C, as appropriate,

(vii) Particulars as to contingent assets and liabilities in form and detail as required in schedule 233 of annual report Form A for the Class I railroads, and similar information for the Class II in the same form and detail,

(viii) Particulars as to guaranties and suretyships in form and detail as required in schedule 110 of annual report Form A for the Class I railroads, and similar information for the Class II in the same form and detail,

(ix) Particulars as to capital stock in form and detail as required in schedules 228, 229 and 230 of annual report Form A or schedule 690 in Form C, as appropriate.

NOTE: The information required as Exhibit 8, shall give effect to any modification of the Commission's Uniform System of Accounts for Railroad Companies in effect on the date of filing the loan application.

(9) As Exhibit 9, statement showing comparative balance sheets as of December 31 for each of the last 10 years preceding the year in which the application is filed in form and detail as required in annual report Forms A and C, schedules 200A and 200L, and if carrier applicant's reports to its stockholders include a consolidated balance sheet for two or more railroads which differs from the returns in the balance sheet schedules of its annual reports to the Commission, reference should be made here to the sections of the stockholders' reports which include said consolidated balance sheets.

(10) As Exhibit 10, to be filed only with the original copy of the application, a copy of carrier applicant's report to its stockholders for each of the 3 years preceding the year in which the application is filed.

(11) As Exhibit 11, comparative income statement for each month of the year in which the loan application is filed, including cumulative data to latest month shown, which shall not be earlier than the second month preceding date of filing the application, compared with the same month of each of the two preceding years, in ac-

count form similar to that required in column (a) of schedule 300 of annual report Form A, or columns (a) and (c) of schedule 1801 of Form C, as appropriate, and modified to include any revision of the Commission's Uniform System of Accounts for Railroad Companies (Part 1201 of this chapter) in effect on the date of filing the loan application.

(12) As Exhibit 12, comparative income statement showing data for each of the last 10 years in account form and detail similar to that required in paragraph (a)(11) of this section.

(13) As Exhibit 13, pro forma income statement showing estimated income account for each of the remaining months in the current year and for each month of the year subsequent thereto, in account form and detail similar to that required in paragraphs (a)(11) and (12) of this section, together with a statement setting forth the basis for such estimates.

(14) As Exhibit 14, comparative statement of total expenditures for maintenance of (i) way and structures and (ii) equipment for each of the past 10 years and for each month of the current year, together with estimated expenditures for the remaining months of the current year and the year subsequent thereto, and including a statement showing the basis for such estimates.

(15) As Exhibit 15, a statement showing for the current calendar year and each 5 years thereafter estimated total operating revenues, total operating expenses, operating ratio, income available for fixed charges, and net income after fixed charges and contingent interest.

(16) As Exhibit 16, a statement showing actual cash balance at the beginning of each month and the actual cash receipts and disbursements during each month of the current year to the date of the latest balance sheet furnished as Exhibit 8, together with a monthly forecast (both before and after giving effect to use of proceeds from the proposed loan) for the balance of the current year and the year subsequent thereto.

(17) As Exhibit 17, a statement showing for each month to latest available month of the current year, compared with the same month of each of the 2 preceding years (i) number of tons of revenue freight carried, (ii) number of revenue ton-miles, (iii) freight revenue (account 101), (iv) number of passengers carried, (v) number of passenger miles, and (vi) passenger revenue (account 102), as well as similar information, on an estimated basis, for each of the remaining months in the current year and the year subsequent thereto.

(18) As Exhibit 18, statement showing comparatively for each year in the 8-year period preceding the year in which the application is filed, and on an estimated basis for the current and succeeding 4 years, the following: (i) Total charges to operating expenses for depreciation of way and structures, and equipment, (ii) deductions for accelerated tax amortization under section 168 of the Internal Revenue Code in excess of such depreciation charged to operating expenses, (iii) net income reported in annual reports to the Commission, and (iv) pro forma net income which would have resulted without the benefit of such deductions for accelerated tax amortization.

(19) As Exhibit 19, a general statement setting forth the facts as to estimated prospective earnings and other funds upon which applicant relies to repay the loan.

(b) The following exhibits are required as to the transaction:

(1) As Exhibit 20, specimens, or forms where specimens are not available, of all securities to be pledged or otherwise issued in connection with the proposed loan; and in case of an issue of bonds copy of the mortgage or indenture by which secured or proposed to be secured.

(2) As Exhibit 21, if the application is with respect to the acquisition of property other than equipment, a statement showing: (i) The name and business address of the owner or vender of the property to be acquired, (ii) a general description as to the character and size of the property and its location, accompanied by a general map and profile or by a general plan, as may be appropriate, (iii) the agreed or estimated purchase price, and the full terms of the contract, if any has

been made, for such acquisition, (iv) such other information or data as may aid in a determination of the reasonableness of the agreed or estimated purchase price, and (v) the account or accounts of the Commission's effective classification of accounts in which the cost of such property would be properly classified.

(3) As Exhibit 22, if the application is with respect to equipment acquired after January 1, 1957, or to be acquired, a statement showing: (i) For locomotives, full particulars as to kind, unit cost, size, power, number of units couples, and name of builder, (ii) for freight cars, full particulars as to service type (box, gondola, flat, etc.), capacity, unit cost, and name of builder, (iii) for passenger cars, full particulars as to service type (coach, baggage, postal, etc.), capacity, unit cost, and name of builder, (iv) for floating equipment, full particulars as to service type (tug, float, ferry, lighter, etc.), displacement tonnage, length, cargo capacity, unit cost, and name of builder, and (v) whether the equipment was purchased through competitive bidding, and, if the unit prices, free on board builders plant, shown are not the lowest bids received, the reason for accepting a higher bid.

(4) As Exhibit 23, if the application is with respect to the construction, completion, extension or improvement of facilities, or additions and betterments thereto, made after January 1, 1957, or not yet made, a statement showing (i) location and description of project, (ii) quantities and prices (actual or estimated) attested by a competent engineer, and (iii) distribution of total cost by primary accounts of the Commission's classification of investment in road and equipment property, together with one copy of each A. F. E. (authority for expenditure) or of each completion report, as may be appropriate.

(5) As Exhibit 24, if the application is with respect to maintenance of property, a statement showing (i) description of project or projects, (ii) date or dates initial work is proposed to be commenced, (iii) additional employees (not now employed by carrier applicant) to be hired or recalled, (iv) why the maintenance is required at this time, (v) breakdown of total cost as between material and labor, and (vi) distribution of total cost by primary accounts of the Commission's classification for operating expenses.

(6) As Exhibit 25, if the application is with respect to refinancing of existing obligations, a statement containing a full description of the transaction, including the terms and conditions of the disposition of such existing obligations.

(7) As Exhibit 26, copies of the loan agreement entered into, or to be entered into, between the carrier and lender, and of any agreements or instruments executed or to be executed in connection with the proposed loan.

(8) As Exhibit 27, copies of correspondence from all, and not less than 3, lending institutions or security underwriters to which application for the financing has been made, evidencing that they have declined the financing unless guaranteed by the Commission or specifying the terms upon which they will undertake the financing without such guaranty.

(c) The following exhibits are required as to the lender:

(1) As Exhibit 28, to be filed only with the original copy of the application, copies of the charter or other organizational papers and of by-laws or other governing instruments, including all amendments.

(2) As Exhibit 29, balance sheet statement as of the latest available date, but within 3 months of the date of filing the application.

(3) As Exhibit 30, income statement for the 3 calendar or fiscal years immediately preceding the year in which the application is filed and similar statement for the latest available period in the current year but within 3 months of the date of filing the application.

§ 1113.3 Fees.

On or before the date of closing of any loan guaranteed by the Commission pursuant to an application filed under this part, the applicant carrier shall pay, or cause to be paid, to the Commission as a guaranty fee such amount as the Commission hereafter may determine and prescribe as neces-

sary to cover the administrative costs of carrying out the provisions of part V of the Interstate Commerce Act, as amended. Checks or money orders in payment of such fees shall be made payable to the order of the Treasurer of the United States.

NOTE: By order of the Commission, 24 FR 3818, May 13, 1959, the guaranty fee referred to in § 1113.3 was determined to be in an amount equal to the three-eighths of one percent of the total principal amount of the loan guaranteed.

§ 1113.4 Execution and filing of application.

The following procedure shall govern the execution and filing of the application:

(a) The original application shall bear the date of execution and be signed with ink by or on behalf of the carrier applicant and the lender. Execution shall be by the applicant if an individual, by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, and, if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the carrier and lender, respectively, shall also sign a certificate in form as follows:

———————— (Name of official) certifies that he is the ———————— (Title of official) of the ———————— (Name of carrier or lender); that he is authorized on the part of said applicant to sign and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid ———————— (Name of carrier or lender); that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

————————
———————— (Date)

(b) There shall be made a part of the original application the following certificate by the Chief Accounting Officer of the carrier applicant:

———————— (Name of officer) certifies that he is ———————— (Title of officer) of ———————— (Name of carrier applicant); that he has supervision over the books of account and other financial records of the carrier applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting and other orders of the Interstate Commerce Commission; that he has examined the financial statements and supporting schedules included in this application and to the best of his knowledge and belief said statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, said financial statements and supporting schedules represent a true and complete statement of the financial position of the carrier applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the carrier applicant.

————————
Date: ————————

(c) The original application and supporting papers, and 6 copies thereof for the use of the Commission, shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423 Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed. If unusual difficulties arise in the furnishing of any of the exhibits required in § 1113.2, the carrier applicant or the lender, upon appropriate showing and with the consent of the Commission, may file a lesser number.

(d) In event the application is for a loan not exceeding $500,000, and the furnishing of exhibits in the detail required by § 1113.2 is shown by the applicant or applicants to be unduly burdensome in relation to the nature and amount of the loan, the Commission may modify the requirements of said section.

§ 1113.5 General instructions.

(a) If the application is approved by the Commission, the following documents will be required for deposit with

the Commission before the transaction is closed:

(1) Resolutions of the board of directors or executive committee of the carrier applicant, and where necessary, of meetings of the stockholders, authorizing the execution and delivery of such obligations, instruments, and security as are incident to the loan and guaranty thereof, in conformity with such terms as may be prescribed by the Commission, and authorizing the designated officers to receive and receipt for the proceeds of the loan.

(2) Final opinion by counsel for the carrier applicant to the effect that he is familiar with the corporate powers of the carrier applicant; that the carrier applicant is authorized to execute and deliver the notes or other obligations evidencing the same, and to pledge and hypothecate any securities pledged as collateral; that the notes or other obligations so executed and so delivered constitute the valid and binding obligations of the carrier applicant, secured by the said collateral, and that the lender will obtain a lien on any security involved of the rank and priority represented by the applicant carrier. Such opinion shall also cover the priority and lien of each item of the collateral offered.

(3) In respect of loans to receivers or trustees, the receiver or trustee will be required to deposit with the Commission certified copies of the court orders and decrees authorizing him to execute and deliver the obligations and to give the security under and according to the terms of the loan and guaranty as prescribed by the Commission.

(b) The guaranty by the Commission of a loan pursuant to an application filed as provided in this part should not be construed as relieving a carrier from complying with applicable provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) in relation to the issuance of securities or the assumption of obligation with respect to securities of others. Any related application filed under said section should be complete in itself. To avoid duplication in filing required information, exhibits included in an application filed with the Commission for authority under said section 20a incident to the proposed loan may be incorporated in and made a part of the related loan application by reference. (See also § 1113.2.)

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

PART 1114—ALTERATION OR MODIFICATION OF SECURITIES AND THE PROVISIONS OF INSTRUMENTS, AND FILING OF CERTIFICATES AND REPORTS

Sec.

1114.1 Form and contents of application.
1114.2 Required exhibits.
1114.3 Procedure.
1114.4 Certificates of notification and periodical reports.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended; 62 Stat. 162; 49 U.S.C. 12, 20b.

SOURCE: 32 FR 20099, Dec. 20, 1967, unless otherwise noted.

§ 1114.1 Form and contents of application.

The application and supporting exhibits, shall conform to Rule 15 of the General Rules of Practice (§ 1100.15 of this chapter) and shall show, in the order indicated, with the following paragraph designations, the following information:

(a) Full and correct name and business address of the applicant (street and number, city and zone, county and State).

(b) Date of incorporation, the Government, State or Territory under the laws of which the applicant was organized and received its present charter, and if the applicant is incorporated under the laws of, or authorized to operate in, more than one State, Territory, or Federal district, all pertinent facts as to each such incorporation or authoriziation.

(c) Whether applicant is a carrier by railroad, a corporation organized for the purpose of engaging in transportation as such a carrier, or a carrier in equity receivership or in process of reorganization under section 77 of the Bankruptcy Act, as amended.

(d) The name of each State in which the applicant carrier operates, has

been authorized by certificate to operate, or proposes to operate.

(e) A precise description of the alterations or modifications proposed and a statement of the reasons for making such alterations or modifications, and the purposes and uses that will be served if such alterations or modifications are made. The statement should be condensed, as most of the details will be supplied in the exhibits required in § 1114.2, but should give a detailed description of the securities to be modified, altered or issued. (1) If the application covers the modification, alteration or issuance of stock, or the modification or alteration of any provisions of any corporate charter, the detailed description should include (i) the kind and class of stock, (ii) the number of shares authorized, the number outstanding (for general purposes and not merely for the purposes of paragraph (3) of section 20b, 49 U.S.C. 20b), and the number to be affected or issued, (iii) the par value of each share, or stated value if having no par value, (iv) amount, (v) voting rights, (vi) preferences, (vii) conversion privileges, (viii) call provisions, (ix) preemptive rights, (x) liquidation rights. (2) If the application covers the modification, alteration or issuance of securities other than stock, or the modification or alteration of any provision of any mortgage, indenture, deed of trust or other instrument, except the corporate charter, pursuant to which any class of securities shall have been issued, or by which any class of obligations is secured, the detailed description should include (i) full title of the securities, (ii) title and date of the indenture, if any, under which the securities were, or are to be issued, or to be modified, and the name or names of the trustee or trustees under the indenture, (iii) principal amount of securities authorized, previously issued, and proposed to be modified or altered and to be affected or issued under the indenture, (iv) denominations of the securities, (v) date of the securities, (vi) interest rate or rates, (vii) interest payment dates, (viii) date or dates of maturities, with amounts maturing on each date, if maturing serially, and (ix) reference to provisions of the indenture, if any, under which the securities were or will be issued, permitting the proposed modification, alteration or issuance of securities thereunder, and relating to sinking funds, redemption features and conversion rights.

(f) In any case where the issuance of securities is involved, the facts and circumstances on which the applicant relies to establish that (to the extent not inconsistent with paragraph (1) of section 20b, 49 U.S.C. 20b) the proposed issue (1) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (2) is reasonably necessary and appropriate for such purpose.

(g) At what price or prices, rate or rates, and upon what terms and conditions it is proposed to sell or otherwise dispose of the securities to be issued, including an estimate of the expenses to be incurred in connection with such sale or other disposition. The estimate of expenses to be incurred in connection with the sale or other disposition of securities should be itemized to show the commissions to be paid, discounts to be allowed, and the total of these, and in addition, legal expenses, accounting expenses, engineering expenses, expenses for certification, expenses for authentication, other expenses, and the total expense; also the grand total of commissions, discounts, and expenses. Where the amounts of the items grouped under "other expenses" are relatively substantial, they should also be itemized under that general item.

(h) The facts and circumstances on which applicant relies to establish that the proposed alteration or modification of securities or instrument (1) is within the scope of paragraph (1) of section 20b of the Interstate Commerce Act (49 U.S.C. 20b), (2) will be in the public interest, (3) will be in the best interest of the carrier, of each class of its stockholders, and of the holders of each class of its obligations affected by such modification or alteration, and (4) will not be adverse to

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the interests of any creditor not affected (within the meaning of paragraph (3) of section 20b) by such modification or alteration.

(i) How and by or through whom it is proposed to effect the proposed alteration or modification, and to whom, or by and through whom, it is proposed to issue any securities to be issued, with details of all contracts, underwriting, and other arrangements made or proposed to be made in connection with the alteration or modification, and issue, if any. Also, a detailed estimate of the expenses to be incurred in connection with such modification or alteration.

(j) Reference to action by the stockholders or directors of applicant, if a corporation, and by the court having jurisdiction over the applicant, if a carrier in equity receivership or in process of reorganization under section 77 of the Bankruptcy Act, as amended, authorizing the proposed alteration, modification or issue and the making and filing of the application, giving dates and places of meetings of stockholders or directors, the date of the court's order, and the names, titles, and post office addresses of the applicant's president, secretary, principal attorney, or other officer or person authorized to sign, verify and file the application on behalf of the applicant.

(k) The name, title, and post office address of counsel, officer, or other person to whom correspondence in regard to the application is to be addressed.

(l) The outstanding principal amount, or the number of shares and par value per share, of each class of security affected by the proposed alteration or modification, and the percentage, if any, of the total of such principal amount and total number of shares for each such class as to which assurances of assent have been obtained from the holders, with a statement of the method of determining such percentage.

(m) Extent and manner of notice, by mail, advertisement or otherwise proposed to be given of the hearing by the applicant, including the time or times, and place or places of advertisement, the reasons for selection of the place or places of advertisement, the class of security or classes of securities the holders of which will be notified, and the names of committees; conferees and other interested parties and the manner of their notification. The Commission will give notices of the application to, and file a copy of it with, the governor of each State in which the applicant operates.

(n) Each class of securities affected, 75 percent of the aggregate principal amount, or number of shares outstanding of which is held by fewer than 25 holders.

(o) Amount, if any, of the securities affected which are pledged under a mortgage, indenture, deed of trust, or other instrument pursuant to which evidences of indebtedness of the applicant or of any company controlling or controlled by the applicant are outstanding, and the amount and description of such evidences of indebtedness; the name or names of any trustee or trustees under any such indenture or deed of trust; and the amount, if any, of the securities affected which are pledged to secure other evidences of indebtedness of the applicant or of any company controlling or controlled by the applicant not so issued under mortgage, indenture, deed of trust, or other instrument, and the amount and description of such other evidences of indebtedness so secured.

(p) Any facts or circumstances relied on by the applicant to show that the proposed modification or alteration does not materially affect the interests of the holder or holders of the evidence or evidences of indebtedness secured by the pledged securities referred to in paragraph (o) of this section.

(q) Amount, if any, of securities, affected by the proposed modification or alteration and of evidences of indebtedness secured by the pledge thereof as referred to in paragraph (o) of this section, which are held by any holder whose assent to the proposed alteration or modification is within the control of the applicant or any person controlling the applicant.

(r) The name or names of any carrier or carriers, or any other person or persons, which or who has assumed liability as guarantor, endorser, surety or otherwise in respect of the securi-

ties proposed to be affected, and whether such carrier or other person has consented in writing to the proposed alteration or modification.

(s) A statement of the procedures and methods which the applicant proposes to use in procuring and verifying the assents of the security holders affected by the proposed alteration or modification, and the character of the evidence which the applicant proposes to certify to the Commission in proof of such assents.

(t) Description and terms and conditions of any certificates of deposit that will be issued in connection with the proposed modification or alteration, by the applicant or committees representative of security holders.

§ 1114.2 Required exhibits.

There shall be filed with and made a part of each original application, and, except as otherwise provided, with each copy, or there shall be presented at the hearing, the following exhibits (see last paragraph under this subheading):

(a) As Exhibit 1, a copy of the charter or articles of incorporation, with amendments to date, of the applicant corporation, duly certified by the appropriate public officer, and a copy of the applicant's bylaws, with amendments to date, authenticated by a proper executive officer of the applicant.

(b) As Exhibit 2, a copy of the proposed plan of alteration or modification of securities.

(c) As Exhibit 3, one or more of the following as may be appropriate:

If applicant is a corporation (1) copies of all resolutions of directors authorizing the proposed modification or alteration, and where an issuance of securities is involved the proposed issuance of securities, for which authority is requested, authenticated by a proper executive officer of the applicant; (2) if the charter or bylaws require approval by stockholders, copies of resolutions of stockholders authorizing such alteration or modification and any issuances of securities, all such resolutions of stockholders to be accompanied by a sufficient transcript of the minutes of their meetings to show the number of shares voted for and against the resolutions, and the number of shares required to adopt the resolution; and (3) copies of resolutions of stock holders or directors, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant, designating by name and for that purpose the executive officer by whom the application is signed, verified and filed on behalf of the applicant.

If the applicant is a carrier in equity receivership or in process of reorganization under section 77 of the Bankruptcy Act, as amended, a copy of the order of the court having jurisdiction authorizing the filing of the application.

(d) As Exhibit 4, opinion of counsel that the alteration or modification and the issuance of securities, if any, with respect to which application is made meet the requirements of law as set forth in § 1114.1(f) and (h), and will be legally authorized and valid if approved by the Commission, with specific reference to any specially pertinent provisions of charter of articles of incorporation or association.

(e) As Exhibit 5, a map of the applicant's existing railroad.

(f) As Exhibit 6, specimens or forms where specimens are not available of all securities and forms of all instruments with respect to which application is made.

(g) As Exhibit 7, in case of the issue or assumption of bonds or evidences of indebtedness, a copy of the mortgage or indenture by which secured or proposed to be secured.

(h) As Exhibit 8, if application is made with respect to the discharge or refunding of existing obligations (including notes maturing not more than two years after the dates thereof, issued under paragraph (9) of section 20a of the Interstate Commerce Act, 49 U.S.C. 20a or otherwise), a statement containing a full description, together with terms and conditions (including discounts and commissions, counsel fees, and all other expenses) of sale or other disposition of such existing obligations.

(i) As Exhibit 9, if application is made with respect to purposes other than those covered by the above classifications under this heading, "Re-

quired exhibits", a statement containing complete details of such other purposes.

(j) As Exhibit 10, details of all creditor obligations of the carrier, not affected by the proposals, to the same extent as required in § 1114.1(e) with respect to affected obligations: *Provided,* That in place of such filing the applicant may refer to documents heretofore filed in proceedings before the Commission, to the extent that the required information is covered by such documents, giving the docket number.

(k) As Exhibit 11, a certified copy of the applicant's general balance sheet as of the latest practicable date and as of December 31 next preceding that date.

(l) As Exhibit 12, a verified copy of the applicant's income and profit and loss statement for the last calendar year and a copy of such statement for the current calendar year to the latest available date, and a statement of the applicant's annual income account for a period sufficient to permit the determination by the Commission of the applicant's probable prospective earnings.

Exhibits shall be numbered as above indicated if filed with the application. If presented at the hearing they will be assigned numbers when presented. The application shall contain a list of exhibits filed therewith, and a list of the required exhibits remaining to be filed at the hearing. Exhibits shall conform in size to Rule 84 of the General Rules of Practice (§ 1100.84 of this chapter) but shall be folded to conform to the size of the application. If the documents here requested have been previously filed in connection with an application under the Interstate Commerce Act, it will be sufficient to make reference to the docket number under which filed, provided that any change or changes occurring in such documents since the filing thereof shall be shown in an exhibit identified to correspond with the exhibit requested. Income statements, balance sheets, or profit and loss accounts, may not be incorporated by reference to the annual reports filed with the Commission.

§ 1114.3 Procedure.

The following procedure shall govern the execution, filing and disposition of the application:

(a) The procedure prescribed in § 1115.6(a) of this chapter governing applications under section 20a of the Interstate Commerce Act (49 U.S.C. 20a).

(b) The original application and supporting papers, six copies thereof for the use of the Commission, and one copy for the governor of each State in which the applicant operates, shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed, and the notarial seal may be omitted.

(c) Upon receipt of the application the Commission will cause notice thereof to be given to, and a copy of the application to be filed with, the governor of each State in which the applicant operates, with inquiry as to whether such governor or other appropriate authority of the State desires to be heard in the matter.

(d) Petitions for leave to intervene may be filed by persons interested in the application prior to or at the time the application is called for hearing, but not thereafter except for good cause shown, the practice in regard to such petitions and answers thereto to be governed by the Commission's general rules of practice.

(e) In connection with its findings required by paragraph (2) of section 20b (49 U.S.C. 20b) the Commission will give directions (1) as to the manner in which the carrier shall submit the proposed alteration or modification (with such terms, conditions, and amendments, if any) to the holders of each class of its securities affected thereby, for acceptance or rejection, and (2) as to the manner of proof to be made by the carrier of the percentage of assents to the proposed alteration or modification by the holders of each class of securities affected thereby.

(f) All letters, circulars, advertisements, and other communications, and

all financial and statistical statements, or summaries thereof, to be used in soliciting the assents or the opposition of holders of securities affected, shall, before being used, be submitted to the Commission for its approval as to correctness and sufficiency of the material facts stated therein; but this requirement shall not be construed to apply to normal and ordinary correspondence or other communication between the carrier and a creditor, stockholder, or other interested party.

§ 1114.4 Certificates of notification and periodical reports.

Sections 1115.4, 1115.5 and 1115.6 of this chapter governing applications under section 20a of The Interstate Commerce Act (49 U.S.C. 20a) shall be followed as a guide.

PART 1115—ISSUANCE OF SECURITIES, ASSUMPTION OF OBLIGATIONS, AND FILING OF CERTIFICATES AND REPORTS

Sec.

1115.1 Application form.
1115.2 Definitions.
1115.3 Procedure; applications, certificates, and reports.
1115.4 Disposal of pledged or treasury securities.
1115.5 Issuance of short-term notes.
1115.6 Reports of securities issued or obligations assumed.

COMPETITIVE BIDDING EXEMPTION

1115.25 Applications for authority to sell securities without competitive bidding.

APPENDIX

AUTHORITY: Sec. 12, 24 Stat. 383, as amended; sec. 20a, 41 Stat. 494, as amended; secs. 204, 205, 214, 49 Stat. 546, as amended, 548, as amended, 557, as amended; 49 U.S.C. 12, 20a, 304, 305, and 314.

SOURCE: 32 FR 20101, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCE: Prescribed forms referred to in this part listed in § 1003.4 of this chapter.

§ 1115.1 Application form.

All carriers and other persons subject to sections 20a and 214 of the act making application for authority (a) to nominally issue securities, (b) to sell, pledge, repledge, or otherwise dispose of securities nominally issued or assumed or nominally outstanding, (c) to actually issue securities, or (d) to assume any obligation or liability as lessor, lessee, guarantor, endorser, surety, or otherwise in respect of the securities of any other person, natural or artificial, actually outstanding, shall make such application substantially in the form of application designated Form BF-6.

CROSS REFERENCE: For amendments to form BF-6 see 37 FR 7160, Apr. 11, 1972, and 42 FR 35655, July 11, 1977.

§ 1115.2 Definitions.

(a) The term "carrier" includes a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to part I of the Act, a common or contract carrier by motor vehicle subject to part II, a corporation organized for the purpose of engaging in transportation as any such carrier, and a sleeping-car company which is subject to part I.

(b) The term "holding company" means a person which is not a carrier, but which is authorized by an order entered under section 5(2) of the Act to control a carrier or carriers and, as provided in section 5(3), is to be considered a carrier subject to the provisions of sections 20a or 214.

(c) The term "securities" is used herein as it is defined in section 20a(1) of the Act.

(d) The terms "nominally issued", "nominally outstanding", "actually issued", and "actually outstanding" are used herein as they are defined by the Commission for purposes of the uniform system of accounts and annual reports of railroads and motor carriers.

§ 1115.3 Procedure; applications, certificates, and reports.

(a) The application shall be filed sufficiently in advance of the date of the proposed issue or assumption to give the Commission reasonable time, not less than 30 days, for the notices and investigation required by law.

(b) The governor of each state upon whom a copy of the application is served, or other appropriate regulatory authority to which the matter is referred, is requested to notify the Commission within 15 days if it is desired to make any representations or to be heard in the matter.

(c) Protests or petitions for leave to intervene may be filed by persons interested in the applications within 15 days after the filing thereof or prior to or at the time the application is called for hearing, if a hearing is ordered, but not afterward, except for good cause shown, the practice in regard to such petitions and answers thereto to be governed as nearly as may be by the Commission's General Rules of Practice.

(d) Public hearing will not be ordered unless good cause therefor is shown or unless the Commission deems a hearing desirable.

(e) The Rules and regulations prescribed in Part 1110 of this chapter shall govern the execution, filing, and disposition of the application, the filing of certificates of notification, and the making of special reports.

§ 1115.4 Disposal of pledged or treasury securities.

(a) Certificates of notification required by paragraph (5) of section 20a of the Act to be filed with the Commission within 10 days after the sale, pledge, repledge, or other disposition of securities theretofore pledged or held unencumbered in the treasury of the carrier, shall be filed substantially in the form designated as Form OP-F 220.

(b) As used in paragraph (5) of section 20a, securities described as "pledged or held unencumbered in the treasury of the carrier" are securities theretofore nominally issued, or reacquired and held in the treasury of the carrier, except securities held by trustees in sinking or other funds.

[32 FR 20101, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

§ 1115.5 Issuance of short-term notes.

(a) Certificates of notification required by paragraph (9) of section 20a of the Act to be filed with the Commission within 10 days after the making of short-term notes within the limits within which such notes may be issued without authorization, shall be filed substantially in the form designated as Form OP-F 230.

(b) The term "short-term notes" means notes maturing not more than two years after the date thereof.

(c) The limits within which short-term notes may be issued without authorization are those specified in paragraph (9) of section 20a and in the proviso of section 214.

(d) Carrier or corporations within the exemptions provided in section 214 are not required to file certificates of notification.

[32 FR 20101, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

§ 1115.6 Reports of securities issued or obligations assumed.

(a) Within 30 days after the initial date of issue of any security or assumption of any obligation or liability authorized, a report showing the issue or assumption shall be filed with the Commission in Form OP-F 240, as revised. An interim report shall be made concurrently with any subsequent application for additional authority filed under sections 20a or 214, showing the action theretofore taken, and any balance previously authorized but not disposed of, in the same form; otherwise no interim report is required. A final report shall be made upon the completion of the issue or assumption, and may be made in lieu of the initial report within the 30-day period following the initial action.

(b) On or before March 31 of the year following the year to which it relates, the respondent shall report in and as a part of its Annual Report Form to the Commission, concerning the securities issued and obligations assumed during such year.

[32 FR 20101, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

Competitive Bidding Exemption

§ 1115.25 Applications for authority to sell securities without competitive bidding.

(a) Special application for exemption from the competitive bidding requirement shall be made in the form

designated as Form OP-F 210 only when for any reason it is not practicable to include the request for exemption in an application filed in Form BF-6, pursuant to the instructions (§ 1115.1-1115.3) respecting applications filed under section 20a.

(b) The requirement that, with certain specified exceptions, all classes of railroad securities other than equipment, issued under authority granted pursuant to the provisions of section 20a of the Act be offered for sale at competitive bidding, or its equivalent, set forth in the Commission's report in Ex Parte 158, In Re Competitive Bidding in the Sale of Securities, 257 ICC 129, decided May 8, 1944, and modified by findings in Atlantic Coast Line R. Co. Competitive Bidding Exemption, 282 ICC 513, decided June 18, 1952, and further modified by supplemental report in Ex Parte 158, Ibid., 307 ICC 1, decided August 14, 1958 with respect to securities issued or proposed to be issued incident to a loan guaranteed under the provisions of part V of the Act, is published in an appendix to this section.

(c) The rules and regulations prescribed in Part 1110 of this chapter shall govern the execution, filing, and disposition of the application.

APPENDIX

Pertinent conclusions and the requirement of the Commission in its report of May 8, 1944, in Ex Parte 158, "In the Matter of Competitive Bidding in the Sale of Securities under section 20a of the Interstate Commerce Act", are as follows:

We find that for the proper administration, execution, and enforcement of section 20a of the Interstate Commerce Act we should require as a condition to our approval of the sale of railroad securities issued under the provisions of that section that such securities be offered for sale at competitive bidding or at what we have heretofore considered tantamount thereto, viz., upon invitation of bids for the purchase thereof. Proposals received in response to such invitation should be opened only at such time and place as is specified in the invitation, and the duly authorized representative of any person making any such proposal should be permitted to be present at the opening of such proposals, and to examine each proposal submitted. If the right be reserved in the advertisement or invitation for bids, the railroad proposing the issue may properly reject all bids and call for new bids or seek such relief as the facts and circumstances may warrant.

We further find that such requirement should apply to all classes of railroad securities other than equipment, as to which no change in the present practice is contemplated, except the following:

(1) Common and preferred stocks;

(2) Securities sold or otherwise issued pro rata to existing holders of securities of the issuing company pursuant to any preemptive right or privilege or in exchange for or extension of outstanding securities, or in connection with any liquidation, reorganization, or financial adjustment;

(3) Any note or other security maturing in not more than 3 years;

(4) Securities sold or otherwise issued when the total issue does not exceed $1,000,000, principal amount;

(5) Securities of any railroad company issued in exchange for the securities or properties of any other railroad company acquired pursuant to authority granted under the provisions of section 5(2) of the act, and any securities of such other company to be acquired by any other person pursuant to such authority;

(6) Securities sold or otherwise issued to a railroad company by any of its subsidiary companies pursuant to authority granted under section 20a of the act where such securities are not to be sold by the parent company, but are to be held subject to our further order; and

(7) Any securities as to which we shall find, upon due showing by a railroad company, either upon application under the provisions of section 20a or upon special application preliminary to the filing of such application under section 20a, that sale at competitive bidding should not be required.

Applications under section 20a to sell securities without competitive bidding on the ground that such securities come within one of the foregoing specific exemptions should include a statement of facts relied upon to show that the exemption applies. Special applications for exemption from the competitive bidding requirement may be made pursuant to such special instructions as may hereafter be issued.

We further find that for the present no formal rule or regulations requiring the sale of railroad securities at competitive bidding should be promulgated. Railroads applying after June 30, 1944, for authority to issue securities under the provisions of section 20a will be expected to observe these findings.

The foregoing requirement was modified by the Commission's report of June 18, 1952, in Finance Docket No. 17748, Atlantic

Coast Line R. Co. Competitive Bidding Exemption. 282 ICC 513, as follows:

It will hereafter be our policy to deny any application for exemption from our competitive bidding requirement when competitive bidding is prima facie required and the applicant has, before obtaining the required exemption from us, entered into any discussions or any negotiations with respect to the terms of sale with any prospective purchaser of its securities. Our competitive bidding requirement is modified to this extent.[1]

The foregoing requirements were further modified by the Commission's supplemental report of August 14, 1958, in Ex Parte 158, (1) to except securities sold or otherwise issued in connection with a loan guaranteed under the provisions of part V of the Interstate Commerce Act from the general requirement set forth in the prior report thereof of May 8, 1944, that railroad securities be offered for sale at competitive bidding or upon invitation of bids for the purchase thereof, and (2) to make the policy expressed in Finance Docket No. 17748, Atlantic Coast Line R. Co. Competitive Bidding Exemption, supra, inapplicable to applications for exemption from the Commission's competitive bidding requirements by an applicant which in good faith, and under the belief that a guaranty may or will be required by the Commission in order for it to obtain the needed financing upon reasonable terms, has entered upon discussions or negotiations with respect to the terms of sale with a prospective purchaser of its securities.

[32 FR 20101, Dec. 20, 1967, as amended at 39 FR 35367, Oct. 1, 1974]

PART 1116—RECORDATION OF DOCUMENTS

Sec.

1116.1 Definitions.
1116.2 Submission of documents for recording.
1116.3 Eligibility of documents.
1116.4 Form and contents of letter of transmittal.
1116.5 Administrative procedure.

AUTHORITY: 66 Stat. 724; 49 U.S.C. 20c.

[1]This is not to be construed as prohibiting preliminary discussion of an exploratory nature with prospective purchasers dealing with the availability of money, the general condition of the market for railroad securities and similar matters, or the making of such inquiries or investigation as may be required to determine the probability that two or more bids will be received if a proposed issue is offered at competitive bidding.

SOURCE: 32 FR 20102, Dec. 20, 1967, unless otherwise noted.

§ 1116.1 Definitions.

As used in this part, "document" means:

(a) A mortgage (except mortgages under the Ship Mortgage Act, 1920, as amended), lease, equipment trust agreement, or other instrument evidencing the mortgage, lease, conditional sale or bailment of one or more vessels operated subject to Interstate Commerce Commission authorization, railroad cars, locomotives, or other rolling stock used or intended for use in connection with interstate commerce; and

(b) Any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge or satisfaction thereof, in whole or in part).

[32 FR 20102, Dec. 20, 1967, as amended at 33 FR 17688, Nov. 27, 1968]

§ 1116.2 Submission of documents for recording.

Documents to be recorded shall be submitted in person or by registered mail addressed to the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423.

§ 1116.3 Eligibility of documents.

A document shall be eligible for recordation only if:

(a) The document is in writing (handwriting, typewriting, or print), executed by the parties thereto, and acknowledged or verified as provided in paragraph (c) of this section.

(b) The original document and, for retention in the files of the Commission, two counterparts thereof, or, if counterparts have not been executed and acknowledged by the parties, two certified true copies thereof, are submitted. A certified true copy of an original document is one which is a complete copy of the original in all respects, including the dates, signatures, and acknowledgements and to which is attached a certificate of a notary public, stating that such officer has compared the copy with the original document and that it is a true and cor-

rect copy in all respects. In case of a corporate mortgage or deed of trust of the nature referred to in paragraph (d) of § 1116.4, two certified true copies may be submitted in addition to an original executed counterpart, whether or not other counterparts have been executed and acknowledged by the parties; and in such case the certification of such copies may be made by the trustee under such mortgage or deed of trust or an officer of such trustee.

(c) Documents submitted for recordation shall be acknowledged or verified:

(1) In a form authorized by the law of the state, territory, district, or possession where executed for the acknowledgment or verification of deeds of land, or

(2) In a form substantially as follows:

INDIVIDUAL FORM OF ACKNOWLEDGEMENT

STATE OF ————

County of ————, ss:

On this —— day of ————, 19——, before me personally appeared (name of signer), to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

[SEAL]

————————

Title of officer

My commission expires ————————

Corporate Form of Acknowledgment

STATE OF ————

County of ————, ss:

On this —— day of ————, 19——, before me personally appeared (name of signer), to me personally known, who being by me duly sworn, says that he is the (title to office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

————————

Title of officer

My commission expires ————————

(d) The document is accompanied by the required recordation fee, which fee, (1) for each document of the type named in § 1116.1(a), shall be $50, and (2) for each document of the type named in § 1116.1(b) shall be $10, except that assignments which are executed prior to the filing of the original instrument and which are submitted concurrently for recordation as one document, shall be counted as one document. A lease and agreement (Philadelphia Plan) shall be counted as one document.

§ 1116.4 Form and contents of letter of transmittal.

(a) The letter of transmittal requesting the recording of documents as described in § 1116.1 (a) and (b) shall be typewritten or printed on paper approximately 8½ x 11 inches with 1½ inch margin on the left side.

(b) The letter shall set forth the names and addresses of the parties to the transaction as follows:

Conditional sale—vendor, purchaser, guarantor.
Mortgage—mortgagor, mortgagee, guarantor.
Equipment trust—vendor, trustee-lessor, lessee, guarantor of lease.
Lease—lessee, lessor, guarantor.
Bailment—bailor, bailee, guarantor.
Other transactions—principal debtors, trustee, guarantor and other parties to the transaction.

(c) A general description of the equipment covered by the document; for railway equipment, whether locomotives, car or other rolling stock, the type of such equipment, with A.A.R. mechanical designation, if any, the number of each type, and identifying marks such as the name or initials of the lessee, mortgagee, or vendee, the road or serial number, or if more than one number of each type, the first and last inclusive numbers; for water carriers equipment, whether towboats, barges, or other vessels, the type of such equipment, a description of the equipment as contained in the U.S. Coast Guard certificate of enrollment for such vessels, the number of each type, and identifying marks such as the name or initials of the lessee, mortgagee, or vendee.

(d) If the document is a mortgage or deed of trust upon a carrier or carriers or upon a railway line or lines which also includes in its coverage any interest of the mortgagor in any vessels or rolling stock owned by it at the date of the mortgage or any interest in vessels or rolling stock thereafter to be acquired, substantially the following statement may be included in the letter of transmittal in lieu of the information specified in paragraph (c) of this section:

Included in the property covered by the aforesaid mortgage or deed of trust are (here identify generally the equipment such as "barges, towboats, or other vessels, railroad cars, locomotives and other rolling stock") used or intended for use in connection with interstate commerce, or interests therein, owned by (name of mortgagor) at the date of said mortgage or thereafter acquired by it or its successors as owners of the water carriers or the lines of railway covered by said mortgage.

and shall be sufficient description of the equipment covered by the document.

(e) In connection with the documents listed in § 1116.1(b) the application shall refer to the prior recording of the document by the recordation number, and the date and hour of such recordation.

(f) The letter of transmittal shall be signed by an executive officer of one of the parties having knowledge of the matters set forth therein and shall show the name and address of the person to whom the original document should be returned.

[32 FR 20102, Dec. 20, 1967, as amended at 33 FR 17688, Nov. 27, 1968]

§ 1116.5 Administrative procedure.

(a) At the time of filing of a document with the Commission pursuant to the provisions of section 20c or 323 of the act, there will be stamped upon the original document and also upon the copies of same a consecutive recordation number and the date and hour of recordation with a notation to the effect that it has been filed pursuant to the provisions of section 20c or 323 of the act. The original will then be returned and the counterparts or copies retained in the Commission's files.

(b) The Commission will establish, maintain and keep open to public inspection under appropriate rules, an index showing the recordation number, together with other pertinent information of each document recorded under the provisions of sections 20c or 323 of the act. When the document is one named in § 1116.1(b) a notation to that effect will be made also on the index showing the original recordation.

(c) There will also be established and maintained and kept open to public inspection under appropriate rules, an index showing for each party the recordation number of all documents to which it is a party which have been filed under sections 20c or 323 of the act.

(d) The Commission cannot undertake to answer inquiries concerning the title to any vessel or vessels or to any unit or units of rolling stock, or any document recorded under the provisions of sections 20c or 323. Individuals interested in such information, however, may make a personal search of the records or may avail themselves of the service of an agent or attorney.

(e) When there has been filed, pursuant to this part, a mortgage or deed of trust of the nature referred to in paragraph (d) of § 1116.4, it shall not be necessary to again file said mortgage or deed of trust when additional vessels or rolling stock are acquired in order to perfect the lien of the same upon such additional vessels or rolling stock.

[33 FR 17689, Nov. 27, 1968]

PART 1117—REORGANIZATION OF RAILROADS

SPECIAL RULES OF PROCEDURE

Sec.

1117.1 "Person" and "railroad corporation."
1117.2 "The debtor."
1117.3 "The security."
1117.4 "Affiliated interests."
1117.5 "Connection."
1117.6 Authority to solicit.
1117.7 Granting of order of authorization.
1117.8 Applicant desiring to act for more than one issue of securities.
1117.9 Contents of application.

Sec.
1117.10 Application by other than an individual.
1117.11 Filing of exhibits.
1117.12 Procedure governing application.

RATIFICATION OF APPOINTMENT AS TRUSTEE

1117.51 Filing of petition.
1117.52 Petition under oath.
1117.53 Number of copies.
1117.54 Form; notice accompanying petition.
1117.55 Consideration of petition.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended, sec. 1, 47 Stat. 1474, as amended; 49 U.S.C. 12, 11 U.S.C. 205.

SOURCE: 32 FR 20103, Dec. 20, 1967, unless otherwise noted.

SPECIAL RULES OF PROCEDURE

§ 1117.1 "Person" and "railroad corporation."

The terms "person" and "railroad corporation" are used in §§ 1117.1-1117.12 as they are defined in section 77(m) of the Bankruptcy Act.

§ 1117.2 "The debtor."

The term "the debtor" as used in §§ 1117.1-1117.12 means any railroad corporation by or against which proceedings have been instituted and are pending under section 77 of the Bankruptcy Act, or against which receivership proceedings have been instituted and are pending in any State or Federal Court, being the proceedings in connection with which the applicant proposes to act.

§ 1117.3 "The security."

The term "the security" as used in §§ 1117.1-1117.12 means any security for which the applicant proposes to act or the deposit of which he expects to solicit and to which the application relates.

§ 1117.4 "Affiliated interests."

The term "affiliated interests" as used in §§ 1117.1-1117.12 means any person (a) by which the person designated is employed; (b) of which he is an officer, director, trustee, stockholder, or partner; (c) in which he has a direct or indirect pecuniary interest; (d) which he controls, whether by stock ownership, lease, agency, or otherwise; or (e) by which he is controlled in any manner whatsoever.

§ 1117.5 "Connection."

The term "connection" as used in §§ 1117.1-1117.12 means the prior or present relationships as employee, director, stockholder, trustee, partner, creditor, debtor, or attorney at law.

§ 1117.6 Authority to solicit.

Any person seeking authority (a) to solicit, or permit the use of his name to solicit, from any creditor or shareholder of a railroad corporation by or against which proceedings under section 77 of the Bankruptcy Act, or against which receivership proceedings have been instituted and are pending, any proxy, or authorization to represent or act for such creditor or stockholder in such proceedings or in any matters relating to such proceedings, or (b) to solicit the deposit by any such creditor or shareholder of his claim against or interest in such railroad corporation, or any instrument evidencing the same, under any agreement authorizing such representation or action for such depositor, or to act under such agreement, or (c) to use, employ, or act under or pursuant to any such proxy, authorization, or deposit agreement, which has been solicited or obtained prior to the institution of such proceedings, shall make application for authority, and such application shall, unless otherwise authorized by the Commission, be filed sufficiently in advance of the date of such proposed solicitation, use, employment, or action, to give the Commission reasonable time, not less than 30 days, for the consideration and hearing required by law.

§ 1117.7 Granting of order of authorization.

An order of authorization will be granted only upon application therefor as provided in §§ 1117.1-1117.12.

§ 1117.8 Applicant desiring to act for more than one issue of securities.

Where the applicant desires authority to act for more than one issue of securities, the information required in §§ 1117.1-1117.12 other than that re-

quired in § 1117.9 (a), (b), (c), shall be supplied for each issue.

§ 1117.9 Contents of application.

Each applicant shall show, in the following order:

(a) Full name and address of the applicant.

(b)(1) If the application is by an individual who proposes to act as a member of a protective committee, partnership, association, or other unincorporated organization, the name and address of such committee, partnership, association, or organization, with date when he became a member.

(2) If the application is by a protective committee, partnership, association, or other unincorporated organization, the names and addresses of the individual members thereof and of the secretary and counsel, if any, with date of organization, and dates when each individual became a member, or secretary, or counsel, designating which members, if any, are officers of the organization.

(3) If the application is by a corporation or a joint-stock company, the names and addresses of the officers and directors of the applicant and the names and addresses of the 20 stockholders of the applicant who, at the date of the application, if known, or if not known, who at the date of the latest closing of the stock book or compilation of list of stockholders of the applicant (if within 1 year prior to the date of the application) had the highest voting powers in the applicant together with names and addresses of counsel, if any, the date of incorporation, and the dates on which each officer and director was elected or appointed.

(c) Principal occupations, for the last 10 years prior to the date of the application, of the applicant, if an individual, of each member, the secretary, and counsel, if the applicant is a committee, partnership, association, or other unincorporated organization, and of each officer director, and principal stockholder (not more than 20) if applicant is a corporation or joint-stock company.

(d) Nature of the authority sought, i.e., whether to solicit, use, employ, or act under or pursuant to proxies or authorizations to represent any member or shareholder of the debtor or to solicit the deposit by such member or stockholder of his claim against, or interest in, such debtor under a deposit agreement, or to act for depositors under such agreement.

(e) Whether the applicant made such solicitation, or used, employed, or acted under or pursuant to, such proxies, authorizations, or deposit agreements prior to the date of the application.

(f)(1) The name of the security.

(2) Date of default, if any, in the security.

(3) Principal amount or number of shares of the security presently outstanding.

(g)(1) Name of the railroad corporation originally issuing the security.

(2) Names of the person currently obligated to meet the principal and interest of the security.

(3) Names of all parties involved in any controversy with respect to the obligation to meet the principal and interest of the security.

(h)(1) Name and title of the proceedings in or in connection with which the committee proposes to act.

(2) The court having jurisdiction in such proceedings.

(3) The nature of such proceedings.

(i) The name or names of the debtor or debtors.

(j)(1) The manner in which the applicant proposes to make such solicitation, or to use, employ, or act under or pursuant to, such proxies, authorizations, or deposit agreements.

(2) The name and address of the persons, if known, to be employed or compensated directly or indirectly by the applicant, to solicit proxies or authorizations to represent holders of the security or to solicit the deposit of the security.

(3) The rates of compensation to be paid to the persons to be so employed.

(4) The maximum amount estimated to be required to pay each person so employed as advances for or in reimbursement of expenses.

(5) The rate of compensation to be charged by the applicant for his services.

(6) The maximum amount estimated to be required in reimbursement of the applicants expenses.

(k) Arrangements contemplated by the applicant to obtain funds for financing his operations before his expenses are approved by the court and the Commission.

(l) Names and addresses of other persons including committees or other organizations in process of formation, known to the applicant, who represent, propose to represent, or have sought to represent, the security.

(m) Names and addresses of the original underwriters of the security.

(n) Any present and prior connection of the applicant and each of the affiliated interests of the applicant with:

(1) The original issuer of the security and each of its affiliated interests.

(2) The debtor and each of its affiliated interests.

(3) The person who originally sold or underwrote or participated in the selling or underwriting of the security.

(4) The trustee of the debtor and of the original issuer.

(5) The trustee of the instrument, if any, under and pursuant to which the security was issued.

(6) The depositary under the proposed agreement, if any, under which the security is to be deposited.

(7) Any other person acting for any securities of the original issuer or of the debtor.

(o) The number of shares of each class of stock, and the principal amount of each class of bonds, notes, certificates, or other obligations, direct or indirect, of the debtor and of each of its affiliated interests, owned by the applicant, any of his affiliated interests, and any member of his immediate family on or about the date of the application.

(p) Whether the applicant, any of his affiliated interests, or any of his immediate family, have, within 6 months prior to the date of the application, purchased or sold any securities or other obligations of the debtor or of any of its affiliated interests.

(q) The names of any depositaries with which the applicant has arranged or proposes to arrange for the deposit of the securities, and the terms and provisions of all contracts and agreements entered into by the applicant and by any of its affiliated interests, with such depositaries.

(r) The terms and provisions of all contracts and agreements entered into by the applicant and by each of his affiliated interests with any other person, including its own members and officers, if the applicant is a committee, or its own officers, directors, or principal stockholders, if it is a corporation, representing or seeking to represent any creditor or stockholder of the debtor, whether such representation is to be as an individual, a committee, an association, an unincorporated organization, a corporation, or a joint-stock company, or as a member, officer, director, or principal stockholder, of the applicant or of any other person.

§ 1117.10 Application by other than an individual.

If the application is by any person other than an individual, the applicant shall, in addition to furnishing the information as to itself required by § 1117.9 (n)-(r) attach to said application a statement or statements under oath by each of its members, its secretary, and counsel, or by each of its officers, directors, and principal stockholders (not more than 20), as may be appropriate, setting forth for each individual so connected with the applicant such information as to his connections, securities, ownership, purchase and sale of securities, and terms and provisions of contracts, as is required of the applicant by said paragraphs: *Provided, however,* That such individuals need not include in such statement or statements information that would duplicate information furnished by the applicant where such information is not peculiarly within the knowledge of such individuals.

§ 1117.11 Filing of exhibits.

There shall be filed with the original application and with each copy thereof, as a part thereof, or in such other manner as the Commission, through appropriate agency, may authorize, the following exhibits:

(a) A copy of the proxy, authorization, or deposit agreement under which the applicant proposes to act.

(b) A copy of the applicant's charter or articles of incorporation, with amendments to date, attested by proper public authority, if the applicant is a corporation or joint-stock company, and of any contract or agreement by which the applicant was formed, if the applicant is a committee, partnership, association, or other unincorporated organization, except that when such copy has been once filed with an application, reference thereto, with subsequent amendments, if any, will suffice.

(c) A copy of any bylaws, adopted or proposed to be adopted, with amendments, if any, to date, to govern the affairs of the applicant, except that were such copy has been once filed with an application, reference thereto with subsequent amendments, if any, will suffice.

§ 1117.12 Procedure governing application.

The following procedure shall govern the execution, filing and disposition of the application:

(a) The original application shall be signed by the applicant or on his behalf by a duly authorized agent having knowledge of the matters set forth, and shall be verified in the manner provided by § 1.17 of this chapter.

(b) The original application and six copies thereof shall be filed as provided in Rule 4(b) of the General Rules of practice (§ 1100.4(b) of this chapter). Each copy shall be complete in itself with copies of all attachments, and shall bear the dates and signatures that appear in the original but the signatures in the copies may be stamped or typed and notarial seal may be omitted.

Ratification of Appointment as Trustee

§ 1117.51 Filing of petition.

The appointee seeking such ratification shall file with the Commission a petition reciting the proceedings in court pertaining to the appointment, asking that the appointment be ratified, and giving the following information with respect to the appointee:

(a) Date and place of birth.

(b) Education.

(c) All past principal occupations and period covered by each.

(d) All present occupations and intentions with respect to continuation thereof during service as trustee.

(e) Whether or not the appointee, within 1 year of the date of his appointment, has been an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith.

(f) All present business relations, connections, or affiliations, of any character, either direct or indirect, with any individuals, partnerships, associations, corporations, or other organization, and all such relations, connections, or affiliations of such individuals, corporations, or organizations, with the debtor or any of its affiliated interests.

(g) The names and addresses of all persons, partnerships, associations, corporations or other organizations in which the appointee or any member of his immediate family has a financial interest, direct or indirect, beneficial, contingent, or otherwise, together with a description of the nature of such interest, showing whether it is evidenced by stock certificates, notes, bonds or other securities.

(h) The names and addresses of all persons, partnerships, associations, corporations, or other organizations to which the appointee is under financial obligation, direct or indirect, fixed, contingent or otherwise, in excess of $4,000 to any one person or concern, together with a description of the nature of such financial obligation, showing whether it is evidenced by book entries, notes, or otherwise.

§ 1117.52 Petition under oath.

The original petition shall be made under oath, and shall be signed by the petitioner.

§ 1117.53 Number of copies.

The original petition and six copies thereof for the use of the Commission shall be filed with the Secretary of the

Commission, Washington, D.C. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed, and the notarial seal may be omitted. Additional copies shall be furnished as directed by the Commission.

§ 1117.54 Form; notice accompanying petition.

Petitions and statements filed by or on behalf of appointees seeking ratification of appointments as trustee shall conform to Rules 15 and 16 of the General Rules of Practice (§§ 1100.15 and 1100.16 of this chapter), and must be accompanied by notice showing service upon all parties who appeared in court in opposition to the appointment.

§ 1117.55 Consideration of petition.

Upon receipt of such petition in due form, and upon receipt from the clerk of the court of a copy of the order of the court appointing the person by or on whose behalf said petition is filed trustee of the debtor's property together with a copy of any petition or petitions and other pleadings presented to the court, and of a transcript, if any, of the proceedings in court, pertaining to such appointment, the Commission will proceed to consider the petition, or will order a hearing, if a hearing shall be deemed necessary, and after such hearing will proceed to consider the petition.

PART 1118—CORPORATE REORGANIZATION OF CARRIERS AND CORPORATIONS

Sec.

1118.1 Submission of copies of reorganization plan.
1118.2 Statements and information to be submitted with reorganization plan.
1118.3 Hearing in court; filing of notice with Commission.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended, sec. 1, 52 Stat. 891; 49 U.S.C. 12, 11 U.S.C. 577.

SOURCE: 32 FR 20106, Dec. 20, 1967, unless otherwise noted.

§ 1118.1 Submission of copies of reorganization plan.

A duly authenticated copy and five additional copies of each such plan for the reorganization of a debtor corporation, subject to the jurisdiction of this Commission under Chapter 1, Title 49, of the United States Code, shall be submitted to this Commission by the proponent of such plan not later than 10 days after its tender to the court in which the reorganization proceeding is pending.

§ 1118.2 Statements and information to be submitted with reorganization plan.

In the event the debtor be a common carrier by railroad engaged in the transportation of persons or property in interstate commerce, or a lessor of such railroad, or a corporation considered as a carrier under the provisions of section 5, Chapter 1, Title 49, of the United States Code, which is, or may be, subject to the jurisdiction of this Commission under Chapter 1 of said Title 49, and which is not, or may not be, a railroad corporation as that term is used in section 77 of the Bankruptcy Act, as amended, there shall be submitted to this Commission, together with the plan of reorganization:

(a) An original verified statement, and five copies thereof, showing:

(1) Date of filing of petition for reorganization.

(2) Date of approval of petition for reorganization.

(3) Whether the debtor's properties are operated under lease or under other arrangement, as part of a general railroad system of transportation, or a general steam railroad system of transportation, and, if so, the name of such system, and the character of operating arrangement.

(4) Whether the debtor is controlled by stock ownership or otherwise, as part of such system and the name of the person exercising such control.

(5) Whether the plan involves any new construction, extension, acquisition, or abandonment of lines, or the acquisition or abandonment of any trackage rights.

(6) If a transfer or lease of, or operating contract covering the debtor's property, or a transfer of control of

the debtor through stock ownership, or a consolidation or merger of the debtor with any other carrier or carriers is contemplated under the plan of reorganization, the name and address, if known, of such transferee, or of the consolidating, merging, or controlling company, including affiliates of such transferee, etc., with other carriers subject to the Interstate Commerce Act.

(b) Six copies, one verified of:

(1) Articles of incorporation of the debtor.

(2) Articles of incorporation proposed for the reorganized debtor or any amendments to the existing articles of incorporation to be made as a result of the reorganization.

(3) Balance sheet of the debtor as of the latest date for which it is available preceding the date of filing the petition.

(4) Income account of the debtor for the calendar year immediately preceding bankruptcy and for succeeding years up to the end of the last full month prior to filing the information, the income account to show total operating revenues and the amount of operating revenues from the transportation of freight in standard steam railroad freight equipment.

(5) If under the plan of reorganization there is contemplated an issue of securities or assumption of obligation or liability as lessor, lessee, corporate endorser, surety, or otherwise in respect of the securities of any other person by the debtor or prospective transferee, a statement showing securities of the debtor or prospective transferee outstanding, securities to be issued, and obligations and liabilities to be assumed, segregated by classes and amounts (par value or, if such have no par value, the fair market value thereof as of date of issue).

§ 1118.3 Hearing in court; filing of notice with Commission.

Notice of the time and place of any hearing in court on any proposed plan of reorganization of a debtor corporation, subject to the jurisdiction of this Commission, in such proceedings shall be filed by the proponent of the plan with the Secretary, Interstate Commerce Commission, Washington, D.C.

PARTS 1120–1129—SPECIAL PROCEDURES—RAIL CARRIERS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PART 1120—CONSTRUCTION, EXTENSION, ACQUISITION, OR OPERATION OF RAILROAD LINES

Sec.

1120.1 Information to be contained in applications.
1120.2 Execution, filing, and disposal of application.
1120.3 Form and style.
1120.4 Notice of application.
1120.5 Return to questionnaire; general instructions.
1120.6 Questionnaire.
1120.7 Exhibits required.
1120.8 Verification required.

AUTHORITY: Sec. 12, 24 Stat. 383, as amended; 41 Stat. 476, as amended; 49 U.S.C. 1, 12.

SOURCE: 32 FR 20106, Dec. 20, 1967, unless otherwise noted.

§ 1120.1 Information to be contained in applications.

Applications for certificates of convenience and necessity authorizing the construction, extension, acquisition, or operation of lines of railroad shall set forth the following information:

(a) Exact corporate name of the applicant.

(b) Whether the applicant is (1) a carrier by railroad subject to the Interstate Commerce Act, (2) a corporation organized to construct and operate a railroad but not an operating corporation, or (3) an unincorporated organization, or an individual.

(c) Date of incorporation, and Government, State, or Territory under the laws of which the applicant was organized. If incorporated under the laws of, or authorized to operate in, several States, give the facts in regard thereto.

(d) Whether it is proposed (1) to construct a new line of railroad or an extension of an existing line of railroad, or (2) to acquire and operate, or to operate, a line of railroad not at the time owned or being operated by a common carrier.

NOTE: If the line to be acquired or operated is one for the abandonment of which permission has been granted, section 1 (18)-(20) of the act applies; the application should state the facts.

(e) Each State, and each county thereof, in which the line would be or is located.

(f) The route and termini of the line it is proposed to construct, acquire, or operate. Give the name of each incorporated city or village through which the line would or does pass.

(g) The total number of miles of track proposed to be constructed, acquired, or operated, showing main lines and branch lines separately.

(h) The reasons, briefly stated, why the present or future public convenience and necessity require or will require the proposed construction, acquisition, or operation. (Detailed reasons should be reserved for the return to the questionnaire set forth in § 1120.6.)

(i) Applicant's general plan for financing the proposed construction, or acquisition, and applicant's relation, if any, traffic or financial, to any other corporation or corporations.

(j) Reference to action by stockholders or directors of the applicant authorizing the making and filing of the application, giving date and place of meeting.

(k) Name, title, and post-office address of counsel or officer to whom correspondence in regard to application is to be addressed.

(l) The application and each copy thereof shall be accompanied by map drawn to scale, showing fully the geographic situation of the lines it is proposed to construct, acquire, or operate, and their relation to existing railroads. Towns, villages, large rivers or lakes, national parks, and reservations should be shown, at least near the route. The limits of the area which the applicant claims would be served should be shown when possible. The map and each copy thereof shall be on a sheet 8 x 10½ inches, or a multiple of that size not larger than 16 x 21 inches, and folded to dimension. The proposed line should be shown in clear relief on the prints by color or otherwise. In addition, 3 extra copies of the map should be submitted, unbound, for the use of the Commission.

§ 1120.2 Execution, filing, and disposal of application.

The following procedure shall govern the execution, filing, and subsequent disposal of the application:

(a) The original application shall be signed by an executive officer of the applicant, shall be verified under oath, and shall show, among other things, that the affiant has knowledge of the matters and things therein stated and is duly authorized by the applicant to verify and file the application.

(b) The original application and nine copies for the use of the Commission shall be filed with the Secretary of the Commission, Washington, D.C. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself; the signatures in the copies may be stamped or typed, and the notarial seal may be omitted. Additional copies shall be furnished as directed by the Commission.

(c) Upon receipt of the application the Commission will transit to the applicant a notice of the filing of the application, which notice shall be published by the applicant at least once during each of three consecutive weeks in some newspaper of general circulation in each county in which any part of the line proposed to be constructed, acquired, or operated is located. Upon receipt of notice from the Commission that the application has been received and assigned a stated docket number, the applicant shall serve, by first class mail, a conformed copy of the application on the governor and public service commission of each State in which any part of the proposed construction, acquisition, or operation would be located, accompanied by a notice that if they desire to be heard in the matter they should advise the Commission within 20 days of their interest in the proceeding. A certificate of such service shall be filed with this Commission.

(d) The return to the questionnaire, as set forth in this part (§ 1120.5 et seq.), shall be filed with the Commission as soon as practicable, but not later than six weeks after receipt of

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notice of the filing of the application. Action will not be taken on the application, and a hearing thereon, if considered necessary by the Commission, will not be ordered until after the return to the questionnaire shall have been received. The applicant shall serve a copy of the return to the questionnaire on each governor and public service commission to whom a copy of the application was sent. A certificate of such service shall be filed promptly with the Commission.

§ 1120.3 Form and style.

The application and the return to the questionnaire shall be prepared in typewritten or printed form on paper approximately 8½ x 11 inches, with 1½ inch margin at the left side for binding.

§ 1120.4 Notice of application.

The return to the questionnaire shall contain a statement of publication of notice of the application in the following form:

The ———————— Company, having made application to the Interstate Commerce Commission, under section 1 (18) of the Interstate Commerce Act, for (here state in detail the nature of application), which application is filed in the office of the Commission in Finance Docket No. ———, hereby affirms that notice of the application has been published in the form prescribed by the Commission, at least once during each of three consecutive weeks, in the following newspapers: (here list the newspapers); that said newspapers are of general circulation in each of the following counties of the States named: (name States and counties), which are all of the States and counties in which the proposed new line of railroad would be located, or in which the line to be acquired or operated is situated; and that the newspaper clippings hereto attached contain true copies of the notice as published in said newspapers.

§ 1120.5 Return to questionnaire; general instructions.

(a) Responses to all questions and requirements of the questionnaire shall be full and complete. Responses of a general nature will not be acceptable. For estimates and opinions the supporting data shall be given. Information not specifically requested but which may be helpful to the Commission in reaching correct conclusions should be supplied in detail.

(b) In the return to the questionnaire the questions must appear before the answers thereto and must be numbered and lettered as in the questionnaire in § 1120.6. Each copy of the return shall bear the dates and signatures that appear in the original and shall be complete in itself; the signatures in the copy may be stamped or typed and the notarial seal may be omitted. Statement of the same facts in answer to two or more questions should generally be avoided, suitable reference being made where necessary.

(c) In connection with applications for authority to acquire and to operate lines of railroad, questions clearly relating only to construction may be answered by the words "not applicable."

(d) The original return and nine copies for the use of the Commission, and two additional copies for each State in which is located any part of the lines to be constructed, acquired, or operated, shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423.

§ 1120.6 Questionnaire.

The applicant shall also submit the following information required by the Commission:

1. The essential facts to show that the applicant is a carrier by railroad, engaged in the transportation of passengers or property, subject to the Interstate Commerce Act, or is a corporation organized to construct and operate a railroad. If not incorporated, so state, giving complete description of party or parties filing the application.

2. Whether the proposed new line of railroad would be both constructed and operated by the applicant.

3. Whether any corporation, individual, or trustee holds control over the applicant at the date of filing this return. If so:

(a) The form of control, whether sole or joint, and whether in trust.

(b) The name and business address of the controlling corporation, individual, or trustee.

(c) The manner in which control was established.

(d) The extent of control.

(e) Whether control is direct or indirect; if indirect, the name and business address of the intermediary through which it was established and is exercised.

(f) The name and business address of the beneficiaries for whom the trust, if any, is maintained.

(g) The purposes of the trust.

4. Whether the applicant is connected by stock ownership, or otherwise, with any industry to be served by the line proposed to be constructed, acquired, or operated. If so, state the facts.

5. The chief uses and purposes of the proposed line or operation.

6. The classes of service to be performed, as passenger, freight, express, and switching.

7. The kind of motive power to be used. If electric power, state source and estimated cost.

8. Whether the line proposed to be constructed, acquired, or operated would receive material revenue from the territory traversed, or serve any material public convenience and necessity of the local territory.

9. The name, area, and population of each county in which the new line is to be constructed, or in which the line to be acquired or operated is located, and the name and population of each city, town, and village at which a station would be or is established together with its distance from a designated initial point, with the source of information as to population.

10. The names of places mentioned in question 9 that are now served by common-carrier railroads (excluding street railways), and the name of each such carrier serving the several places.

11. The names of the places mentioned in question 9 that have no common carrier railroad service, the distance in miles of each such place from the nearest station of a common-carrier railroad, and the character of the connecting highway.

12. The name and population of each city, town, and village (together with state and county in which located), within the area to be served but not on the proposed route.

13. The approximate distance in miles by highway from the nearest station on the line to be constructed or acquired to each of the places mentioned in question 12, and the names of all common-carrier railroads that now serve each of the places.

14. The names of common-carrier railroads with which the line would connect, and the proposed points of track connection.

15. The number of common-carrier truck and bus lines operating in the area to be traversed by the line, and the character of service performed by each.

16. The general character of the country which the line would serve. Indicate whether it is level, rolling, mountainous, cultivated, pasture, prairie, desert, rocky, or timbered, etc.

17. The approximate area of the territory to be served by the line, an estimate of the population therein, and the area.

(1) in timber,

(2) in pasture, and

(3) under cultivation. (See General Instructions, § 1120.5.)

18. The kinds of industry carried on in the area to be served, such, for example, as farming, dairying, grazing, coal mining, manufacturing, lumbering, etc., and the relative importance of each.

19. The main facts as to the age, growth, and extent of such industries, their probable future growth and permanence, and the reasons therefor.

20. What carriers now serve these industries, and to what extent.

21. Whether the chief support of the line to be constructed or acquired would come from the general community or from some particular industry or industries, located or to be located. In the latter case, give facts concerning such particular industry or industries and applicant's contractual or financial relation thereto.

22. Whether the proposed line of railroad would be built, acquired, or operated primarily for a direct profit from railway operation, or for the advantage of any other industry or business. If for the latter, state what industry or business would be so benefitted, what such advantages would be, and the applicant's contractual or financial relation to said industry.

23. If the line is to be or is an extension of an existing railroad, or a branch, connecting track, or cutoff, the extent to which it is expected to be directly profitable in itself, and the extent to which it is expected to be justified by its effect on the business of the existing lines.

24. If the line is to be a connecting link between existing railroads, the kind and volume of traffic, expressed in tons or carloads, that probably would be interchanged, and the economies that would be effected by such interchange.

25. Of the interchange traffic mentioned in answer to question 24, what part, expressed in tons or carloads, cannot be hauled or moved by existing railroads or truck lines.

26. The facts concerning any agreement tentative or otherwise, with existing carriers covering operation, interchange of traffic, division of rates, or trackage rights, in connection with the line.

27. Whether any aid, gift, grant of right-of-way, or other donation has been promised in connection with the proposed new line of railroad; if so, state specifically the nature, amount, and value of such promised donations.

28. The manner in which it is proposed to finance construction and equipment, or ac-

quisition, the kind and amount of securities to be issued, and the approximate terms of their sale; to what extent funds for financing are now available, and which, if any, of such securities would be underwritten by industries to be served by the proposed line.

29. An estimate, in detail, of the character and volume of traffic expected and the gross revenue to be derived therefrom, covering each of the first five years of operation, together with an estimate of the annual gross revenues expected after the first five years. The detailed estimate required for the first five years should show the amount of each class of traffic, the mean length of haul, the rate per unit, and the revenue to be derived, also chief points or territories of origin and destination.

30. The estimated gross revenue, operating expenses, net revenue, and net railway operating income, corresponding with the estimates of traffic under question 29. By "net railway operating income" is meant the excess of the credits over the debits to income, as reflected by the operating revenue, operating expense, railway tax accrual, uncollectible railway revenue, equipment rent, and joint facilities rent accounts.

31. The part of the estimated traffic which will constitute net additional business developed or created by the construction of the proposed new line of railroad, and the part that will be diverted from existing railroads.

32. The dates on which it is expected to begin and to complete the construction of the proposed new line of railroad.

33. The engineering work in full detail which has been done with respect to the proposed new line at the time of filing the return.

34. The following details concerning the line to be constructed:

(a) The gage and number of main line tracks.

(b) Weight of rail for main line tracks.

(c) Rate of maximum grade in each direction, and whether and how compensated for curvature.

(d) Rate of limiting grade that will fix train loading in each direction, and whether and how compensated for curvature.

(e) If helper grades are to be used, the location, length, rate, and direction of ascent for each.

(f) The maximum rate of curve.

(g) The average amount of curvature per mile, in degrees.

(h) The approximate length and height of wooden trestles or other temporary construction.

(Details under this paragraph not fixed by survey are to be estimated from reconnaissances so far as possible.)

Question 34 should also be answered for lines to be acquired, so far as the information may be available.

35. An estimate of total increase in charges to road and equipment account during the first five years after completion of the new line. If this displaces rental charges on equipment, so show.

36. Any additional facts or reasons to show that the public convenience and necessity require the granting of this application.

§ 1120.7 Exhibits required.

In the case of applications for authority to construct, there shall be filed with the return to the questionnaire the following exhibits: (Copies of return need not contain any exhibits except E and F.)

A. A copy of the engineering report of reconnaissance for the proposed line, if records of location surveys are not submitted.

B. A copy of the specifications as to construction, if any exist.

C. A map of the location projected or actually staked for the proposed line, if such location has been made. This map should show the alignment in detail, with the usual topographic features added. Small maps may be folded accordion fashion to conform to the size of the return. If more than 12 feet long, the maps should be submitted in a continuous roll.

D. A copy of the best available profile of the proposed line. If more than 12 feet long, submit in a continuous roll, otherwise fold to the size of the return.

E. (1) A detailed estimate of the cost of building the proposed line, with all the necessary appurtenances (except equipment), classified by Interstate Commerce Commission primary accounts; also a concise detail of estimated quantities and prices covering what is set down under accounts 3 to 12, inclusive. Details may be required for other principal accounts. A complete estimate showing quantities and prices in reasonable detail may be submitted in any form.

(2) Detailed estimates of the kind and cost (or rental cost) of the equipment required to handle the estimated traffic separately for the first and the fifth years of complete operation. State whether the equipment is to be bought or rented, show second-hand equipment as such; give number of units, class of service and general type, with the weight and tractive power of locomotives and capacity of freight cars.

F. If the applicant is a going concern, copies of the income account for the five preceding calendar years and for the months of the current year for which the figures are available; also copies of the latest profit and loss account and general balance sheet.

G. Opinion of counsel that the proposed construction or acquisition is within the charter powers of the applicant.

In the case of applications for authority to acquire or operate, there shall be filed with the original of return to the questionnaire Exhibits F and G described in this section.

§ 1120.8 Verification required.

The return to the questionnaire should be verified by the applicant in the following form:

State of ———— *ss.*
County of ————
———— (Name of affiant) makes oath and says that he is the ———— (Title of affiant) of the ———— (Corporate name of applicant) applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing return to questionnaire of said Commission in respect of the application in Finance Docket No. ————; that he has carefully examined all of the statements referred to in said return and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth in such return and that all such statements made and the matters set forth therein are true and correct to the best of his knowledge, information, and belief.

————————

Subscribed and sworn to before me ———— in and for the State and County above named, this ———— day of ————, 19 .

————————

————————

My commission expires ————

PART 1120A—MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec.

1120A.1 Scope of rules.
1120A.2 Exemptions and common carrier status.
1120A.3 Modified certificate of public convenience and necessity.
1120A.4 Termination of service.

AUTHORITY: 5 U.S.C. 553 and 49 U.S.C. 10321 and 10505.

SOURCE: 45 FR 55208, Aug. 19, 1980, unless otherwise noted.

§ 1120A.1 Scope of rules.

These special rules apply to the operations over abandoned rail line, which has been acquired (through purchase or lease) by a State. The rail line must have been fully abandoned, or approved for abandonment by the Commission or a Bankruptcy Court. As used in these rules, the term "State" includes States, political subdivisions of States, and all instrumentalities through which the State can act. An operator has the option of applying for a modified certificate of public convenience and necessity under this section or a common carrier certificate under 49 U.S.C. 10901 and 49 CFR 1120.

§ 1120A.2 Exemptions and common carrier status.

The acquisition by a State of a fully abandoned line is not subject to the jurisdiction of the Interstate Commerce Commission. The acquisition by a State of a line approved for abandonment and not yet fully abandoned is exempted from the Commission's jurisdiction. If the State intends to operate the line itself, it will be considered a common carrier. However, when a State acquires a rail line described under section 1120A.1 and contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. The operators of these lines are exempted from 49 U.S.C. 10901 and 10903 to which are the statutory requirements governing the start up and termination of operations. Operators exempted from these requirements must comply with the requirements of this part and must apply for a modified certificate of public convenience and necessity. The operator is a common carrier and incurs all benefits and responsibilities under 49 U.S.C. subtitle IV; however, the State through its operational agreement or the operator of the line may determine certain preconditions, such as payment of a subsidy, which must be met by shippers to obtain service over the line. The operator must notify the shippers on the line of any preconditions. The modified certificate will authorize service to shippers who meet these precondi-

tions and the operator will be required to provide complete common carrier service under this certificate only to those shippers. (See 363 I.C.C. 132.)

§ 1120A.3 Modified certificate of public convenience and necessity.

(a) The operator must file a notice with the Commission for a modified certificate of public convenience and necessity. Operations may commence immediately upon the filing; however, the Commission will review the information filed, and if complete, will issue a modified certificate notice. If an operator has an application pending under section 10901a the time the rules become effective, it may file a request to convert the application to a modified certificate within 60 days of the effective date of these rules.

(b) A notice for a modified certificate of public convenience and necessity shall include the following information:

(1) The name and address of the operator and, unless the operator is an existing rail carrier:

(i) Its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

(ii) The names and addresses of all of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

(iii) Sufficient information to establish the financial responsibility of the operator.

(2) Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.

(3) The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement, it should be provided);

(4) A description of the service to be performed including, where applicable, a description of:

(i) The line over which service is to be performed;

(ii) All interline connections, including the names of the connecting railroads;

(iii) The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

(iv) Any preconditions which shippers must meet to receive service.

(5) The name and address of any subsidizers, and,

(6) Sufficient information to establish the financial responsibility of any subsidizers (if the subsidizer is a State, the information should show that it has authority to enter into the agreement for subsidized operations).

(c) The service offered and the applicable rates, charges, and conditions must be described in tariffs published by the operator pursuant to the Commission's rules.

[45 FR 55208, Aug. 19, 1980, as amended at 46 FR 37705, July 22, 1981]

§ 1120A.4 Termination of service.

The duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be: (a) Filed with the State and the Commission, and (b) mailed to all persons that have used the line within the 6 months preceding the date of the notice.

PART 1121—ABANDONMENT OF RAILROAD LINES AND DISCONTINUANCE OF SERVICE

Subpart A—General

Sec.
1121.10 Purpose and scope.
1121.11 Definitions.

Subpart B—System Diagram

1121.20 System Diagram Map.
1121.21 Description of lines to accompany the System Diagram Map.
1121.22 Filing and publication.
1121.23 Amendment of the System Diagram Map.
1121.24 Availability of data.
1121.25 Reservation of jurisdiction.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use

1121.30 Notice of intent to abandon line or discontinue service.

Sec.
1121.31 Form of notice.
1121.32 Contents of application.
1121.33 Summary application.
1121.34 Filing and service of application.
1121.36 Participation in abandonment or discontinuance proceedings.
1121.37 Commission determination and certification under 49 U.S.C. 10904.
1121.38 Financial assistance procedures.
1121.39 Public use procedures.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

1121.40 General.
1121.41 Revenue and income attributable to branch lines.
1121.42 Calculation of avoidable costs.
1121.43 Apportionment rules for the assignment of expenses to on-branch costs.
1121.44 Valuation of rail properties.
1121.45 Reasonable return.
1121.46 Submission of revenue and cost data.
1121.47 Financial status reports.

Subpart E—[Reserved]

Subpart F—Abandonment Procedures for Bankrupt Railroads

1121.60 Filing and service requirements.
1121.61 Contents of the application.
1121.62 Responses to the application.
1121.63 Report of the Commission.

APPENDIX A
APPENDIX B

AUTHORITY: Sec. 205(e)(1)(B), Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by sec. 309, Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57; and secs. 1, 1a, Interstate Commerce Act as amended by secs. 801, 802, and 809, Railroad Revitalization and Regulatory Reform Act of 1976, 90 Stat. 31, 127 thru 130, and 144, and sec. 218, Rail Transportation Improvement Act, Pub. L. 94-555, 90 Stat. 2613.

SOURCE: 41 FR 48520, Nov. 4, 1976, unless otherwise noted.

Subpart A—General

§ 1121.10 Purpose and scope.

(a) Section 1(18) of the Interstate Commerce Act (Act) as amended, governs the extension, construction, and acquisition of lines by common carriers by railroad. Regulations under that section are set forth at this Part 1120. Section 1a of the Act governs abandonments of rail lines and discontinuance of rail service by common carriers. Section 1a provides that no line of railroad shall be abandoned and no rail service discontinued unless the Commission shall have issued a certificate of public convenience and necessity authorizing such abandonment or discontinuance.

(b) This Part 1121 contains regulations governing abandonment of and discontinuance of service over rail lines. This Part 1121 also sets forth procedures for providing financial assistance to assure continued rail freight service and for acquisition of rail lines for alternative public use. Subpart A of this part contains definitions and a statement of purpose and scope of the regulations. Subpart B of this part requires each common carrier by railroad subject to Part I of the Act to file a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. The diagram shall be accompanied by a detailed description of certain of the carrier's lines of railroads. Subpart C of this part specifies the notice, filing, and processing requirements for abandonment or discontinuance applications, offers of financial assistance, and offers of acquisition for public use. Subpart D of this part establishes standards for use in evaluation of abandonment and discontinuance applications and for determination of rail freight service continuation assistance.

§ 1121.11 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

(a) "Account" means an account in the Commission's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

(b) "Act" means the Interstate Commerce Act (49 U.S.C. 1 et seq.) as amended.

(c) "Base Year" means the latest 12-month period, ending no earlier than 6 months prior to the filing of the abandonment or discontinuance application, for which data has been collected at the branch level as prescribed in § 1121.40(b).

(d) "Branch" means a segment of line for which an application for a certificate of abandonment or discontinuance, pursuant to section 1a of the Act, has been filed.

(e) "Carrier" means a railroad company or the trustee or trustees of a railroad company subject to regulation under Part I of the Act.

(f) "Commission" means the Interstate Commerce Commission.

(g) "Designated state agency" means the instrumentality created by a State or designated by appropriate authority to administer or coordinate its state rail plan as required by section 5(j)(2) of the Department of Transportation Act (49 U.S.C. 1654), or regulations promulgated pursuant thereto.

(h) "Form R-1" means the railroad's annual report filed with the Commission in accordance with the requirements of section 20 of the Act.

(i) "Offeror" means a shipper, a State, the United States, a local or regional transportation authority, or any financially responsible person offering rail service continuation assistance under section 1a(6)(a) of the Act.

(j) "Office" means the Rail Services Planning Office established by Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) as amended.

(k) "Rail Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

(l) "Rail Form A" means the Commission's Formula for Use in Determining Rail Freight Service Costs, Statement 1F1-73.

(m) "Significant user" means (1) each of the 10 rail patrons which originated and/or received the largest number of carloads (or each patron if there are less than 10), and (2) any other rail patron which originated and/or received 50 or more carloads, on the line proposed for abandonment or discontinuance, during the 12-month period preceding the month in which notice is given of the abandonment or discontinuance application.

(n) "Subsidy year" means any twelve-month period for which a subsidy agreement has been negotiated and is in operation.

(o) "GMA" means the General Managers Association of Chicago.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978; 45 FR 18008, Mar. 20, 1980]

Subpart B—System Diagram

§ 1121.20 System Diagram Map.

(a) Each carrier shall prepare a diagram of its rail system on a map, designating all lines in its system by the categories established in paragraph (b) of this section.

(b) All lines in each carrier's rail system shall be separated into the following categories:

(1) All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Commission;

(2) All lines or portions of lines potentially subject to abandonment are those which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

(3) All lines or portions of lines for which an abandonment or discontinuance application is pending before the Commission on the date upon which the diagram, or any amended diagram, is filed with the Commission;

(4) All lines or portions of lines which are being operated under the rail service continuation provisions of section 1a(6)(a) of the Act or of section 304(c)(2) of the Regional Rail Reorganization Act of 1973, as amended, on the date upon which the diagram, or any amended diagram, is filed with the Commission; and

(5) All other lines or portions of lines which the carrier owns and operates, directly or indirectly.

(c) The system diagram map shall be color-coded to show the 5 categories of lines as follows:

(1) Red shall designate those lines described in § 1121.20(b)(1);

(2) Green shall designate those lines described in § 1121.20(b)(2);

(3) Yellow shall designate those lines described in § 1121.20(b)(3);

(4) Brown shall designate those lines described in § 1121.20(b)(4); and

(5) Black or dark blue shall designate those lines described in § 1121.20(b)(5).

(d) Each carrier shall also prepare and submit to the Commission a black and white version of the system diagram map and accompanying line descriptions which clearly identify each of the 5 categories of line and are suitable for publication in the FEDERAL REGISTER, in accordance with Appendix A to this part.

(e) The system diagram map shall also identify, and shall be drawn to a scale sufficient to depict clearly, the location of:

(1) All State boundary lines;

(2) Boundaries of every county in which is situated a rail line owned or operated by the carrier which is listed in categories 1 thru 4 (§ 1121.20(b) (1) thru (4)).

(3) Every Standard Metropolitan Statistical Area (SMSA) any portion of which is located within 5 air miles of a rail line owned or operated by the carrier; and

(4) Every city outside an SMSA which has a population of 5,000 or more persons (according to the latest published United States census reports) and of which any portion is located within 5 air miles of a rail line owned or operated by the carrier. A series of interrelated maps may be utilized where the system serves a very large or congested area. An explanation of the interrelationship must be furnished.

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978]

§ 1121.21 Description of lines to accompany the System Diagram Map.

Each carrier shall list and describe, separately by category and within each category by State, all lines or portions of lines identified on its system diagram map as falling within categories 1 thru 3 (§ 1121.20(b) (1) through (3)) as follows:

(a) Carrier's designation for each line (for example, the Zanesville Secondary Track);

(b) State or States in which each line is located;

(c) County or counties in which each line is located;

(d) Mileposts delineating each line or portion of line; and

(e) Agency or terminal stations located on each line or portion of line with milepost designations.

§ 1121.22 Filing and publication.

(a) Each carrier shall file with the Commission six copies of its color-coded system diagram map (identified by its "AB number" as set forth in Appendix B hereto) and of the accompanying line descriptions. When an amended map is filed, the line descriptions for the lines which were amended must be filed. The initial system diagram map and descriptions shall be filed within 180 days after the effective date of these regulations.

(b) The color-coded system diagram map, any amendments of the map, and accompanying line descriptions shall be served upon the Governor, the public service commission (or equivalent agency) and the designated State agency of each State within which the carrier operates or owns a line of railroad.

(c) The Commission shall publish a black-and-white version of the initial and each amended system diagram map as submitted in accordance with § 1121.20(d) and accompanying line descriptions in the FEDERAL REGISTER. The carrier shall: (1) Publish in a newspaper of general circulation in each county within which is located a line in categories 1 through 3 (§ 1121.20(b) (1)-(3)) or a line which has been amended, a notice containing a black-and-white copy of the system diagram map (or a portion of map clearly depicting its lines in such county) and a description of each such line; (2) post a copy of the newspaper notice in each agency station or terminal on each line in categories 1 through 3 (§ 1121.20(b) (1)-(3)), or on each line which has been amended or, if there is no agency station on the line, at any station through which

business for the line is received or forwarded; and (3) furnish, at reasonable cost, upon request of any interested person a copy of its color-coded or black-and-white system diagram map and the publication in the county newspaper shall so indicate. Republication of category 3 lines, which prior to November 1, 1976, were already set for oral hearing, modified procedure, or for which an order has been issued finding public convenience and necessity not to require future continued operation of the line, is not required for compliance with the section.

(d) Each carrier shall file with the Commission an affidavit of service and publication stating the date each was accomplished. A copy of each newspaper notice published shall be attached to the affidavit. The effective date of the filing of the initial system diagram map and each amended system diagram map as required in paragraph (a) of this section shall be deemed to be the date upon which the Commission receives the affidavit required in this paragraph.

(e) The Commission shall require republication of the notice if it is found to be inadequate.

[43 FR 30557, July 17, 1978, as amended at 43 FR 45588, Oct. 3, 1978]

§ 1121.23 Amendment of the system diagram map.

(a) Each carrier shall be responsible for maintaining the continuing accuracy of its system diagram map and the accompanying line descriptions. Each carrier shall also prepare and submit to the Commission a black-and-white version of the system diagram map and accompanying line descriptions which clearly identify each of these categories of line and are suitable for publication in the FEDERAL REGISTER, in accordance with Appendix A. Amendments may be filed at any time and will be subject to all carrier filing and publication requirements of § 1121.22 as they apply to the amendment and each individual line which has been amended.

(b) Every system diagram listing a line in category 2 (§ 1121.20(b)(2)) shall be revised annually. Each annual revision shall clearly reflect the carrier's decision whether to transfer each such line to category 1 or 5 (§ 1121.20(b) (1) or (5)) or to retain the line in category 2 for further study.

(c) By June 30 of each year, each carrier shall file with the Commission:

(1) An amended and updated color-coded and black-and-white system diagram map and line descriptions which shall be subject to the filing and publication requirements of § 1121.22 as they apply to the amendment and each individual line which has been amended; or

(2) A verified statement by a corporate officer having authority to so certify that no change has occurred in the categories of lines shown on its most recently filed system diagram map and accompanying descriptions.

(d) Under section 1a(5)(b) of the Act, the Commission is precluded from issuing a certificate of abandonment or discontinuance if the abandonment or discontinuance application is opposed by a significant user, a State, or a political subdivision of a State unless the line involved is identified and described on the system diagram map for at least 4 months prior to the filing of such application. The 4-month minimum notice period of section 1a(5)(b) will be deemed to have commenced only for a line or portion of a line which is designated on the carrier's system diagram map as a line in category 1 (§ 1121.20(b)(1)).

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 30557, July 17, 1978; 45 FR 18008, Mar. 20, 1980]

§ 1121.24 Availability of data.

Each carrier shall provide to the designated state agency, upon request, information concerning the net liquidation value (as defined in § 1121.44(c)) of any line placed in category 1 (§ 1121.20(b)(1)) on its system diagram map or line description together with a description of such a line and any appurtenant facilities and of their condition.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978]

§ 1121.25 Reservation of jurisdiction.

Section 1a(5)(a) of the Act authorizes the Commission, at its discretion, to provide for designation of lines as

"potentially subject to abandonment" under standards which vary by region of the Nation, by railroad, or by group of railroads. The Commission expressly reserves the right to adopt such varying standards in the future.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use

§ 1121.30 Notice of intent to abandon line or discontinue service.

(a) The applicant shall give notice of its intent to file an abandonment or discontinuance application by (1) serving notice on the Commission by certified letter concurrently with newspaper publication of the Notice or service upon those shippers who are significant users (as defined in § 1121.11(m)) on the line proposed to be abandoned or discontinued, whichever first occurs, (2) serving notice by first class mail (unless otherwise noted) on (i) the Governor (by certified mail), (ii) Public Service Commission (or equivalent agency), (iii) designated State agency, and (iv) State Cooperative Extension Service, of each State in which all or part of the line of railroad sought to be abandoned, or over which service is proposed to be discontinued, is situated; (v) the Department of Transportation (Federal Railroad Administration), (vi) the Department of Defense (Military Traffic Management Command), (vii) The Department of Interior (Bureau of Outdoor Recreation), (viii) the Railroad Retirement Board, (ix) the Office of the Special Counsel, (x) the National Railroad Passenger Corporation (where a line it operates over is proposed for abandonment), and (xi) the headquarters of the Railroad Labor Executives' Association, at the time the notice is served on the Commission, (3) posting the notice in a conspicuous place at each agency station and terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the notice shall be posted at any agency station through which business for the line is received or forwarded, and (4) publishing the notice at least once during each of three consecutive weeks in a newspaper of general circulation in each county in which any part of the line of railroad proposed to be abandoned or discontinued is situated.

(b) The posting and publication requirements of this section must be completed within the 30-day period prior to the actual filing of the application. Service must be completed at least 15 days, and not more than 30 days, prior to the actual filing date.

[46 FR 38520, July 28, 1981, as amended at 46 FR 45348, Sept. 11, 1981]

§ 1121.31 Form of notice.

The notice of intent to abandon or to discontinue service shall be in the following form:

No. AB (Sub-No.)

NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE SERVICE

(Name of Applicant) hereby gives notice that on or about (insert date application will be filed with the Commission) it intends to file with the Interstate Commerce Commission, Washington, D.C. 20423, an application for a certificate permitting the abandonment of (the discontinuance of service on) a line of railroad known as extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name) a distance of miles, in County(ies), State(s). The line for which the abandonment (or discontinuance) application will be filed includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The reason(s) for the proposed abandonment (or discontinuance) is (are) (explain briefly and plainly why the proposed action is being undertaken by the applicant).

This line of railroad has appeared on the system diagram map in category 1 (§ 1121.20(b)(1)) since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any interested person, in response to this notice, is entitled to file with the Interstate Commerce Commission written comments concerning the proposed abandonment (or discontinuance) or protests to it.

Protests to the proposed abandonment (or discontinuance) shall at a minimum contain:

(1) Identification of protestant including its name, address, and business;

(2) Statement of protestant's interest in the abandonment or discontinuance pro-

ceeding; whether protestant uses the involved service; and if it does not, information with respect to the group or public interest it represents;

(3) Specific reason(s) for opposing the abandonment (or discontinuance), including information with respect to protestant's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts;

(4) Any rebuttal of information or material submitted by applicant; and

(5) Request for oral hearing and reasons therefor, if desired.

In addition, any commentor or protestant may provide a specific statement of position and summary of evidence with regard to any or all of the following:

(1) Intent to offer financial assistance;

(2) Environmental impact;

(3) Impact on rural and community development;

(4) Suitability of the properties for other public purposes; and

(5) Recommended provisions for protection of the interests of employees.

Written comments and protests will be considered by the Commission in determining whether an investigation is needed to assist in determining what disposition to make of the application. In the event an investigation is conducted, then the commenting party or protestant may participate in the proceeding as its interests may appear.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively in either oral hearings or via the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of protests should refer to 49 CFR 1121.36.

Written comments and protests should indicate the proceeding designation No. AB (Sub-No.) and should be filed with the Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than (insert the date 30 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Commission to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 2 copies of all comments or protests shall be filed with the Commission together with a certificate of service.

If no protests are *received* within 30 days after the application is filed, the Commission will grant the abandonment (or discontinuance) request and issue a certificate which permits the abandonment (or discontinuance) to occur within 75 days after the application is filed.

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Commission decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10905 and 49 CFR 1121.38). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons wishing further information concerning abandonment procedures may contact the Interstate Commerce Commission's Section of Finance, Office of Proceedings or the Commission's Rail Services Planning Office, or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1121.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Commission) at each agency station or terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded) (insert name, address, location and business hours). The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

[46 FR 45348, Sept. 11, 1981]

§ 1121.32 Contents of application.

Applications for certificates of public convenience and necessity permitting the abandonment of railroad lines or the discontinuance of rail service shall contain the following information and each paragraph (a) through (i) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be discontinued is a part of any railroad system.

(4) Relief sought (abandonment of line or discontinuance of service).

(5) Detailed map of the subject line on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(6) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map, in compliance with §§ 1121.20–1121.23, and the date upon which such line was first listed on the system diagram map in category 1 in accordance with § 1121.20(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

(7) Detailed statement of reasons for filing application.

(8) Name, title, and address of representative of applicant to whom correspondence should be sent.

(b) *Condition of properties.* (1) The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration Class I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service Provided.* Description of the service performed on the line during each of the 2 calendar years immediately preceding the filing of the application, for that part of the current year for which information is available, and for the base year (as defined by § 1121.11(c)), if different, including the actual:

(1) Number of trains operated and their frequency.

(2) Miles of track operated (include main line and all railroad-owned sidings).

(3) Average number of locomotive units operated.

(4) Carload commodity group tonnage on the line.

(5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier).

(6) Average crew size.

(7) Level of maintenance.

(8) Any inportant changes in train service undertaken in the 5 calendar years immediately preceding the filing of the application.

(9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable, avoidable costs, and reasonable return on value for the line to be abandoned for the base year (as defined by § 1121.11(c) and to the extent such branch level data is available), in accordance with the methodology prescribed in §§ 1121.41–1121.45, as applicable, and submitted in the form called for in § 1121.46, as Exhibit 1.

(2) The same computation shall be made for the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available using data collected at the branch level to the extent available and otherwise allocating system revenues and expenses to the line. The basis for any such allocation shall be stated with particularity.

(3) The carrier shall also compute an "Estimated Subsidy Payment" for the base year in the form called for in Exhibit I and an alternate payment to reflect (i) increases or decreases in attributable revenues and avoidable costs projected for the subsidy year and (ii) an estimate, in reasonable detail, of the cash income tax reductions, Federal and State, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance to comply with minimum Federal Railroad Administration Class I safety standards, shall be stated with particularity.

(4) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operating income for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(5) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(e) *Rural and community impact.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1121.11(m), by name, address, principal commodity, and by tonnage and/or carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application and for that part of the current year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and nature of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(5) Statement of whether the properties proposed to be abandoned are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

(f) *Environmental impact.* The applicant shall submit as a part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with § 1108.12 (b) and (c). If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference to the location of the required information elsewhere in the abandonment or discontinuance application.

(g) *Passenger service.* If passenger service is provided on the line, a statement of whether appropriate steps have been taken for discontinuance pursuant to sections 13a (1) and (2) of the act, as amended, or the Rail Passenger Service Act, as amended.

(h) *Financial statements.* (1) Carrier's general balance sheet as of the latest date available.

(2) Carrier's income statement for each of the 2 calendar years immediately preceding the filing of the application for abandonment or discontinuance and for that portion of the current year for which information is available.

(i) *Additional information.* The application shall submit such additional information to support its application as the Commission may require.

(j) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

VERIFICATION

State of ———— ss.
County of ————
———————— (Name of affiant) makes oath and says that he is the ———— (Title of Affiant) of the ———— (Name of applicant) applicant herein; that he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Interstate Commerce Commission the foregoing applica-

tion in AB- ——— (Sub-No. ———); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

———————————
(Signature)

Subscribed and sworn to before me ——— in and for the State and County above named, this ——— day of ———, 19—.

———————————
My commission expires ———————

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978; 43 FR 45588, Oct. 3, 1978; 46 FR 45348, Sept. 11, 1981]

§ 1121.33 Summary application.

(a) If the applicant anticipates no substantial or material opposition to an application for abandonment or discontinuance, it may omit from the application the information required under § 1121.32, except that required under paragraphs (a), (d)(3), (e), (f), and (i) of that section. All notice and publication requirements of §§ 1121.30, 1121.31, and 1121.34 must be followed for a summary application.

(b) A summary application must contain a certification that applicant is not aware of any substantial and material objection to the application.

(c) If an investigation is ordered to be conducted (§ 1121.37), of a summary application, the applicant must file the remainder of the information required in a standard long-form application under § 1121.32 within 60 days of the service date of the Commission's order instituting the investigation. The actual date of filing of the application, as supplemented, for the purposes of complying with all statutory timetables, shall be deemed to be the date upon which such additional complete information is received by the Commission.

(d) If the information necessary to complete a summary application which has been made the subject of an investigation is not received by the Commission within the 60 day period under paragraph (c) of this section, the summary application may not be refiled prior to 1 calendar year from the service date of the order of dismissal.

(e) A check or money order payable to the Interstate Commerce Commission must be submitted with the application to cover the applicable filing fee, which in the case of a summary application shall be 25 percent of the filing fee for a standard long-form application. If a summary application is later supplemented pursuant to paragraph (c) of this section, the remaining 75 percent of the full filing fee must be submitted with the supplementary materials.

§ 1121.34 Filing and service of application.

(a) An original and six copies of applications, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423. The original shall bear the date and signature and shall be complete in itself; the signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(b) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirtement fo § 1121.30. The affidavit shall include the dates of service, posting, and publication of the notice.

(c) When the application is filed with the Commission, the applicant shall serve, by first class mail, a copy on the Governor, the Public Service Commission (or equivalent agency), and the designated State agency of each State in which any part of the line of railroad sought to be abandoned or discontinued is situated, and on the Commission's Rail Services Planning Office. A copy of the application will be available for public inspection, on or after the date the abandonment application is filed with the Commission, at each agency station or terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the application shall be deposited at any

agency station through which business for the line is received or forwarded). A certificate of service shall be promptly filed with the Commission.

(d) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment or petition to investigate upon request. A certificate of service shall promptly be filed with the Commission.

(e)(1) The Commission shall reject any abandonment or discontinuance application which does not substantially conform to the regulations in this Subpart C regarding notice, form, and content or which applies to a line which has not properly been published on the carrier's system diagram map in conformance with the regulations of Subpart B of this part.

(2) Upon the filing of an abandonment or discontinuance application, the Commission will review the application and determine whether it conforms with all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Commission shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application.

(3) A revised application may be submitted, and the Commission will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted with 60 days of the order rejecting the incomplete or improper application need not be subjected to new notice and publication under § 1121.30, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(4) The resubmission of an abandonment or discontinuance application shall be considered a de novo filing for the purposes of computation of the time periods prescribed in section 1a of the Act, *Provided,* That a resubmitted application is deemed complete and proper.

§ 1121.36 Participation in abandonment or discontinuance proceedings.

(a) (1) Interested persons may become parties to an abandonment or discontinuance proceeding by filing with the Commission written comments or protests. Protests to an abandonment or discontinuance shall, at a minimum, contain:

(i) Identification of protestant including its name, address, and business;

(ii) Statement of protestant's interest in the abandonment or discontinuance proceeding; whether protestant uses the involved service; and if it does not, information with respect to the group or public interest it represents;

(iii) Specific reason(s) for opposing the abandonment or discontinuance, including information with respect to protestant's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts;

(iv) Any rebuttal of information or material submitted by applicant; and

(v) Request for oral hearing and reasons therefor, if desired.

(2) In addition, any commenter or protestant may provide a specific statement of position and summary of evidence with regard to any or all of the following:

(i) Intent to offer financial assistance;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Suitability of the properties for other public purposes; and

(v) Recommended provisions for protection of the interests of employees.

(3) Written comments and protests will be considered by the Commission in all proceedings in determining whether an investigation is needed to assist in determining what disposition to make of the application. In the event an investigation is conducted, then the commenting party or protestant may participate in the proceeding as its interests may appear. Those parties filing protests should be prepared to participate actively in either oral hearings or via the submission of additional material in the form of verified statements.

(b) *Employee or employee representative participation.* (1) In each abandonment or discontinuance proceeding in which the application is granted, employee protective conditions at least as beneficial to the interests of employees as the provisions established pursuant to 49 U.S.C. 11347 and pursuant to section 405 of the Rail Passenger Service Act (as those provisions have been interpreted by the Commission) shall be imposed; and

(2) Employees or their representatives may file comments or protest, but need not, since the Commission will impose in each proceeding the employee protection provisions set forth in paragraph (b)(1) of this section.

(c) *Filing and service of written comments, protests, and replies.* (1) Written comments and protests shall be filed with the Commission (Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423) within 30 days of the filing with the Commission of an abandonment or discontinuance application. The proposed date of filing of an abandonment or discontinuance application shall be included in the Notice of Intent required in §§ 1121.30–1121.31.

(2) An original and 2 copies of each written comment or protest shall be filed with the Commission.

(3) A copy of each written comment or protest shall be served on applicant or its representative at the time of filing with the Commission. Each filing shall contain a certificate of service.

(4) Replies to written comments and protests will be considered by the Commission provided they are filed and served within 5 days of the due date of the pleadings they address. An original and 2 copies of such replies shall be filed with the Commission.

(d) *Time limits.* (1) Pleadings, requests or other papers or documents (including any comments or protests and any appeal from a Commission decision) required or permitted to be filed under this part must be received for filing at the Commission's Offices at Washington, DC within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative, provided, however, that if such document is mailed by certified, registered, or express mail, postmarked at least 3 days prior to the due date, it will be accepted as timely filed.

(2) In computing any time period prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

(3) Any filing under this part which falls due on a Saturday, Sunday, or a legal holiday in the District of Columbia, may be filed at the Commission by the end of the next day which is neither a Saturday, Sunday, nor a holiday, except as indicated in paragraph (d)(4) of this section. A half holiday shall not be considered as a holiday.

(4) Offers of financial assistance made pursuant to 49 U.S.C. 1121.38(c) must be filed on or before their statutory due date as computed in paragraph (d)(2) of this section, regardless of whether that date is a Saturday, Sunday, or a legal holiday in the District of Columbia.

(5) The Commission will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.

(6) Modified procedure: (i) If the Commission decides to institute an investigation under the modified procedure, the following time limits shall govern the submission of evidence:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served;

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served; and

(C) Applicant's reply verified statements due no later than 55 days after the date the decision instituting an investigation is served.

(ii) Under the schedule established in paragraph (d)(6)(i) of this section, parties shall not be permitted to file motions to strike all or part of any evidence submitted.

(7) Oral Hearings: (i) If the Commission decides to institute an investigation through oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements pursuant to

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paragraph (d)(7)(ii) of this section. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

(ii) The following time limits shall govern the submission of written evidence prior to the commencement of the hearing:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served; and

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served. Any rebuttal evidence by applicant shall be received in the form of testimony at the oral hearing.

(iii) Post hearing legal briefs shall be due 20 days after the close of the oral hearing, or at an earlier date if established at the hearing by the hearing officer.

(e) *Appellate procedures*—(1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR 1100.98. Appeals to decisions not to institute an investigation in a particular abandonment or discontinuance proceeding will be governed by the rule set forth in 49 CFR 1011.7(b)(1), pertaining to appeals from decisions of employees under delegated authority. An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

(2) *Appeals criteria.* (i) Appeals to the initial decision in non-protested proceedings or non-investigated (protested) proceedings will not be entertained. Those decisions are administratively final upon the date they are served.

(A) In a protested but not investigated proceeding, parties seeking further administrative action may file a petition to reopen the proceeding under paragraph (e)(6) of this section. If an abandonment or discontinuance is granted and a party wishes the Commission to consider a petition to reopen before the abandonment or discontinuance certificate becomes effective, it must file its petition within 15 days after the administratively final decision is served (together with any necessary request for a stay of the certificate's effectiveness). If a petition is received within that 15 day period, any replies to the petition must be filed no later than 25 days after the date the decision is served. The Commission will then announce whether it will grant the petition (and reopen the proceeding) by the 120th day after the application was filed (the last date upon which the certificate could become effective).

(B) In a proceeding that is not protested, since the Commission is required to authorize abandonment or discontinuance, the only subsequent pleadings permitted are petitions to vacate the certificate filed under paragraph (e)(8) of this section.

(ii) In investigated proceedings, the Commission may hear appeals in its discretion, if it finds that either:

(A) The action (if taken by an administrative law judge, an employee board, or a division) involves a matter of general transportation importance, or

(B) The action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Time limits.* (i) Any appeal from the initial decision in an investigated proceeding shall be filed no later than 20 days after the date the initial decision is served.

(ii) The Commission will announce whether it will hear an appeal filed under paragraph (e)(3)(i) of this section within 30 days after the date the initial decision is served. If the Commission decides to hear the appeal, other parties will be afforded 15 days from the date of service of the decision to file replies to the appeals.

(4) *Form.* An appeal and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(5) To the extent that an appeal requests further hearing, rehearing, reargument, or reconsideration, the appeal shall state in detail the nature of the relief requested and the reasons therefor. When a party seeks an op-

portunity to introduce evidence, the appeal must state briefly the evidence, explain why it is not cumulative, and explain why it was not previously adduced.

(6) Petitions to reopen administratively final actions: Except as provided for in paragraph (e)(2)(i)(B) of this section, a person may file a petition to reopen any administratively final action of the Commission. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. An original and 10 copies of such petitions should be filed with the Commission.

(7) Judicial review: (i) Parties may seek judicial review of a Commission action in an abandonment or discontinuance proceeding on the day the action of the Commission becomes final.

(ii) If an appeal or a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(8) Petitions to vacate certificates: In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.) the Commission will entertain petitions to vacate certificates in these abandonment or discontinuance proceedings. An original and 10 copies of these petitions to vacate should be filed with the Commission.

(9) *Petitions to stay.* (i) The filing of an appeal shall not stay the effect of a prior action. An original and 10 copies of any petitions to stay should be filed with the Commission.

(ii) If an appeal is filed in an investigated proceeding, under paragraph (e)(2)(ii) of this section, a petition to stay is unnecessary and inappropriate. A certificate will not have been issued at that time and, if the Commission decides to hear the appeal, will not be issued until the Commission has acted upon the appeal. Therefore, there is no action requiring a stay.

(iii) A petition to reopen an administratively final action in a protested but non-investigated proceeding may be accompanied by a petition for a stay of the effectiveness of a certificate of abandonment or discontinuance, which permits the abandonment or discontinuance to occur prior to 120 days after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed, when effectiveness is required by law (49 U.S.C. 10904(c)(2)).

(iv) A party may petition for a stay of the effectiveness of a certificate of abandonment or discontinuance pending a request for judicial review. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 10 days prior to the effective date of the certificate. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

[46 FR 45348, Sept. 11, 1981]

§ 1121.37 Commission determination and certification under 49 U.S.C. 10904.

(a) If no protests to an application are filed under § 1121.36, the Commission shall (1) find that the public convenience and necessity require or permit the abandonment or discontinuance, and (2) no later than 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.

(b) Upon receipt of a protest to an application under § 1121.36, the Commission shall, no later than 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

(1) If no investigation is instituted, the Commission shall issue a decision no later than 75 days after the date the application is filed. If the Commission finds that the present or future public convenience and necessity re-

quire or permit the abandonment or discontinuance, it shall issue a certificate no later than 90 days after the application is filed permitting the abandonment or discontinuance to occur no later than 120 days after the application is filed (unless the financial assistance procedures provided for in § 1121.38 have not been concluded).

(2) If the Commission decides to institute an investigation, the investigation shall be completed no later than 135 days, and an initial decision issued no later than 165 days, after the date the application is filed.

(i) The initial decision following an investigation shall become the final decision of the Commission unless, during the 30 days following the initial decision, the Commission decides to hear appeals in accordance with the criteria set forth in § 1121.36(e)(2)(ii).

(ii) If an initial decision following an investigation is appealed, and considered by the Commission in its discretion, the Commission shall issue a final decision no later than 255 days after the date the application is filed.

(iii) Whenever the Commission finds, following an investigation, that the present or future public convenience and necessity require or permit the abandonment or discontinuance, the Commission will issue a certificate no later than 15 days following the final decision, permitting the abandonment or discontinuance to occur no later than 75 days following issuance of the final decision (unless the financial assistance procedures provided for in § 1121.38 have not been concluded).

(3) A copy of the decision instituting an investigation of an abandonment or discontinuance application shall be served on the carrier which owns or operates the line of railroad or its representative. Copies of the decision shall also be served by the Commission on all parties which filed written comments and on all persons upon which copies of the application are required to be served under § 1121.34(c).

[46 FR 45350, Sept. 11, 1981; 46 FR 48216, Oct. 1, 1981]

§ 1121.38 Financial assistance procedures.

(a) An applicant for a certificate of abandonment or discontinuance shall provide promptly upon request to a party considering an offer of financial assistance and shall provide concurrently to the Commission the following:

(1) An estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(2) Its most recent reports on the physical condition of that part of the line involved in the proposed abandonment or discontinuance; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line.

(b) In any proceeding in which the Commission finds, after investigation or without investigation, that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance of rail service, the Commission will, concurrently with service of the decision, publish the findings in the FEDERAL REGISTER as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10905 and pursuant to this section of the regulations.

(c) *Submission of offers of financial assistance.* (1) A prospective offeror shall serve any offer of assistance upon the carrier owning or operating the involved line and upon other parties to an abandonment or discontinuance proceeding. The offer shall also be filed concurrently with the Commission (Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423).

(i) An offer may be filed and served any time after the filing with the Commission of an abandonment or discontinuance application.

(ii) An offer must be filed and served no later than 10 days after publication in the FEDERAL REGISTER (as required in paragraph (b) of this section) of a Commission finding that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance of service. This filing and service is subject to the requirements set forth in § 1121.36(d) (1) and (3).

(iii) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required by 49 U.S.C. 10905(b) and not otherwise contained in the application, the Commission will entertain petitions to toll the normal 10-day period for submitting offers of financial assistance. These petitions must be filed with the Commission no later than 5 days after publication in the FEDERAL REGISTER (as required in paragraph (b) of this section and described in subsection (ii) of this paragraph). These petitions should include copies of the prior written request for information or an accurate outline of the specific information that was verbally requested. Replies to these petitions must be filed within 10 days after the publication. As with the offers (see § 1121.36(d)(4)), these petitions and replies must be filed on or before their actual due date. The Commission will decide whether to toll the 10-day period for submitting offers within 15 days after publication.

(2) The offer as filed shall contain:

(i) An offer of financial assistance accompanied by a Proposed Subsidy Payment in the form prescribed in § 1121.46 or an offer to acquire all or a portion of the line accompanied by a detailed statement of the proposed acquisition cost and proposal for continued operations;

(ii) A resolution, authorization, or other evidence demonstrating that the offeror has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize or to acquire and operate the line;

(iii) Information demonstrating that the offeror has, or within a reasonable time will have, the financial resources to subsidize or acquire the line and otherwise to fulfill its contractual obligations; and

(iv) Information demonstrating that the financial assistance offered is likely to cover the difference between the revenues attributable to an avoidable costs of the line, plus a reasonable return on the value of the line, or the cost of acquisition and the proposed continued operation of the line;

(v) If the offer to subsidize or purchase the line is less than the carrier's estimate provided under paragraph (a)(1) of this section, the offeror shall explain the basis of the disparity, and the manner in which the offer of subsidy or purchase is calculated.

(3) If the offeror is not a government entity it shall also submit:

(i) A current, detailed balance sheet showing its financial condition as to the latest date available (not more than 90 days prior to the filing of the offer);

(ii) A statement of revenues, expenses, and net income for the current portion of the calendar year or offeror's fiscal year and statements for the two immediately preceding calendar or fiscal years or if not available, a statement from a bank or other financial institution attesting to the person's financial capability to discharge its obligations; and

(iii) Such additional information which, in the opinion of the offeror, is necessary or appropriate to support a finding that it is financially responsible.

(d) *Proposed subsidy payment.* (1) An offeror of financial assistance for all, or a portion, of a line may formulate an offer of subsidy predicated upon the owning or operating carrier's base year net avoidable costs and reasonable rate of return or upon the carrier's projected subsidy year Estimated Subsidy Payment, as submitted in its abandonment or discontinuance application under § 1121.32(d).

(2) Alternatively, an offeror may compute its own Proposed Subsidy Payment using the methodology and form described in Subpart D, the traffic, revenue, and other data contained in the abandonment or discontinuance application, and other evidence of record in the abandonment or discontinuance proceeding.

(e) *Proposed acquisiton cost.* (1) An offeror of financial assistance may also make an offer to acquire all or a portion of the line to be abandoned.

(2) In formulating its acquisition offer, an offeror may either accept the carrier's valuation of the properties, as submitted in its abandonment application under § 1121.32(d), or may have the properties appraised by a qualified and certified appraiser and may use

either the valuation or the appraisal as its acquisition offer.

(3) An acquisition offer shall include a detailed statement of all items making up the offer, including a price certain and all terms and conditions.

(4) An acquisition offer shall include a detailed statement of the manner in which operations will be continued over the line after acquisition by the offeror, including, if applicable, a proposed operating agreement whereby the owning or operating carrier or another carrier will perform the operations.

(f) Upon receipt by the carrier of a written comment under § 1121.36 indicating an intent to offer financial assistance or upon receipt by the carrier of an actual offer of financial assistance, whichever occurs earlier, the carrier shall make available to the commenting party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.46). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(g) *Commission's 15-day determination under 49 U.S.C. 10905.* If within 15 days after publication in the FEDERAL REGISTER of its finding that the abandonment or discontinuance should be permitted, as provided in § 1121.38(b), the Commission finds, consistent with 49 U.S.C. 10905, that a fiancially responsible person has offered assistance which is likely to cover.

(1) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line, or

(2) The acquisition cost of all or any portion of the line, then the Commission shall postpone the issuance of a certificate, or, if a certificate has been issued, postpone the effective date of the certificate, in accordance with paragraphs (i) and (k) of this section. The Commission shall determine whether the criteria in this paragraph have been met by each offeror if more than one offer is made (see paragraph (m) of this section). However, if the time for filing an offer has been tolled under § 1121.38(c)(1)(iii), the time for the Commission's determination under this section will be extended to five days after an offer has been filed.

(h) *Modified estimated subsidy payment.* Offerors may request, and carriers shall provide, an estimated subsidy payment reflecting operations of less than the entire line.

(i) *Negotiations.* (1) The carrier and the offeror are encouraged to negotiate an agreement for subsidy or acquisition before the issuance by the Commission of a final decision in an abandonment or discontinuance proceeding. The parties may agree to a final Estimated Subsidy Payment or acquisition price which varies from that contained in the application or in the offer, taking into account such factors as rate increases, changes in traffic level, and maintenance necessary to comply with minimum Federal Railroad Administration Class I safety standards, as projected for the subsidy year. The parties may also agree to provisions which modify the standards established under Subpart D of this part.

(2) When an agreement is reached, the parties shall promptly serve a verified copy on the Commission and on all parties to the abandonment or discontinuance proceedings.

(3) The Commission shall not consider an offer of financial assistance or any resulting agreement in making its initial finding on the merits of the abandonment or discontinuance application.

(j) *Agreement on financial assistance.* (1) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate, or, if the certificate has been issued, the effective date of the certificate, for so long as the agreement, or an extension or modification of the agreement, is in effect.

(2) If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission will approve the transaction and dismiss the application for abandonment or discontinuance. Commission approval is not required under 49 U.S.C. 10901

or 11343 for the parties to consummate the transaction and for the purchaser to institute service.

(k) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation.

(2) If no agreement is reached within 30 days after the offer of subsidy or purchase is made, and neither party requests the Commission to establish the conditions and amount of compensation during that same period, the Commission will issue a certificate authorizing the abandonment or discontinuance no later than 50 days after notice is published under paragraph (b) of this section (unless an appeal is being heard pursuant to § 1121.36(e)). Such certificate will be effective on the date of issuance. If a certificate had already been issued, and the effective date postponed by the Commission while the parties negotiated the offer of subsidy or purchase, the certificate will be effective 50 days after the date the notice is published under paragraph (b) of this section (unless an appeal is being heard pursuant to § 1121.36(e)).

(l) *Requests to establish conditions and compensation for financial assistance.* (1) If the Commission is requested to establish the conditions and compensation for financial assistance in accordance with paragraph (k) of this section, the Commission will issue its decision on the request no later than 60 days after the request is filed with the Commission and served concurrently on all parties.

(2) Because the applicant may receive multiple offers of financial assistance (see paragraph (m) of this section), no request to establish conditions and compensation shall be permitted prior to applicant's selection of the offeror with whom it wishes to transact business.

(3) Any party filing a request with the Commission to establish conditions and compensation for financial assistance shall provide reasons why its estimates are correct and why the other negotiating party's estimates are incorrect; points of agreement and points of disagreement between the negotiating parties; and evidence substantiating these allegations.

(4) Where subsidy has been offered, and no agreement has been reached, the Commission will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line.

(5) Where an offer of purchase has been made in order to continue rail service on the line, and no agreement has been reached, the Commission will determine the price and other terms of sale. In no case will the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals Constitutional minimum value (which is not less than net liquidation value of the line, or the going concern value of line, whichever is greater, computed without regard to any labor protection costs).

(6) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw its offer no later than 10 days after the date the Commission's decision is served, by notifying, in writing, the Commission, the applicant, and all other parties to the proceeding. If the offeror does withdraw its offer within this time, the Commission shall approve the transaction and issue a certificate authorizing the abandonment or discontinuance no later than 20 days after the date the decision on the request for financial assistance is served, unless other offers are being considered pursuant to paragraph (m) of this section (and unless an appeal is being heard pursuant to § 1121.36(e)).

(m) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line, the applicant shall select the offeror with whom it wishes to transact business. Applicant shall make its selection known to the Com-

mission and all parties, in writing, no later than 25 days after the date the notice is published pursuant to paragraph (b) of this section.

(2) When the applicant has received multiple offers of financial assistance, and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Commission to establish the conditions and amount of compensation no later than 40 days after the date notice is published pursuant to paragraph (b) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation no later than 50 days after the date notice is published pursuant to paragraph (b) of this section. If no request by any other offeror is made, the Commission shall issue a certificate authorizing the abandonment or discontinuance no later than 60 days after the date notice is published pursuant to paragraph (b) of this section (unless an appeal is being heard pursuant to § 1121.36(e)).

(3) When the Commission has established the conditions and amount of compensation, and the original offer has been withdrawn pursuant to paragraph (l)(6) of this section, any other offeror may accept the Commission's decision no later than 20 days after the date the decision on the request is served. The Commission will require the applicant carrier to enter into a sale or subsidy agreement with the subsequent offeror, if the sale or subsidy agreement incorporates the Commission's decision.

(n) *Disposition after sale.* No purchaser of a line or portion of line sold under this section may transfer or discontinue service on the line prior to the end of the second year after consummation of the sale. Nor may the purchaser transfer the line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(o) *Discontinuance of subsidy.* Any subsidy provided under this section may be discontinued by giving at least 60 days notice to the applicant and other parties to the proceeding. Unless, within the 60-day notice period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was to be discontinued, the Commission will, at the carrier's request, issue a certificate authorizing the abandonment or discontinuance of service on the line no later than 10 days after the date the carrier's request is filed with the Commission and served by the carrier on all parties.

(p) *Default on agreement.* In the event any party to a financial assistance agreement defaults on the obligations thereunder, then any party to the agreement shall promptly inform the Commission. Upon notification the Commission will take such action as it may deem appropriate.

[46 FR 45351, Sept. 11, 1981]

§ 1121.39 Public use procedures.

(a) When the Commission finds that the present or future public convenience and necessity permit or require the abandonment of a rail line, it may also make a finding that the rail properties are suitable for use for other public purposes. Such a finding shall be based upon representations of the parties and upon the Commission's own analysis of the record.

(b) When the Commission finds that the rail properties are suitable for use for other public purposes, the Commission shall condition any certificate issued to require that the properties be offered, upon reasonable terms, for acquisition for other public purposes.

(c) To assure compliance with such a condition, the Commission may postpone the effective date of a certificate for a period not to exceed 180 days to allow negotiations for acquisition of the properties for other public purposes.

(d) Such a postponement of the effective date of a certificate may run concurrently with any similar postponements required under section 1a(4) of the act or ordered to allow negotiation and execution of a financial

assistance agreement under section 1a(6) of the act and § 1121.38.

(e) When an agreement for acquisition of the properties for other public purposes is reached, the parties shall promptly serve a copy on the Commission and all other parties to the proceeding.

(f) When such an executed agreement is filed with the Commission, a certificate of abandonment shall be issued, which shall become effective and may be further conditioned in accordance with the provisions of section 1a of the act and these regulations.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

Source: 43 FR 7624, Feb. 24, 1978, unless otherwise noted.

§ 1121.40 General.

(a) *Contents of subpart.* (1) Section 1a(7) and section 1a(11)(b) of the act direct the Commission to determine the extent to which the avoidable costs of providing rail service plus a reasonable return on the value of the line exceed the revenues attributable to the line. Section 205(e)(1)(B) of the Regional Rail Reorganization Act of 1973, as amended, directs the Office to publish standards for determining the "avoidable costs of providing rail freight service", as that phrase is used in section 1a(6)(ii)(A) of the act. This subpart contains the methodology for such determinations and the standards necessary for application of those terms in the context of a particular proceeding. Such data will be used in reaching the Commission's findings on the merits of an abandonment of discontinuance proceeding and in making the necessary financial assistance determinations.

(2) This subpart also sets forth a method by which the carrier may establish its Estimated Subsidy Payment to be included in its application (§ 1121.32(d) of Subpart C of this part) and by which an offeror of financial assistance may formulate a subsidy offer and/or Proposed Subsidy Payment under section 1a(6)(a)(i) of the act and § 1121.38 of Subpart C of this part.

(b) *Data collection.* The owning or operating carrier shall establish a system to collect at branch level the data necessary to compute the base year data and the final subsidy payment. The collection and compilation of such data shall be in accordance with the Branch Line Accounting System (49 CFR Part 1201) established by the Office pursuant to section 205(e)(1)(a) of the Regional Rail Reorganization Act of 1973, as amended.

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement is concluded and rail service continued thereunder, the final annual payment will be adjusted to reflect the actual revenues derived, avoidable costs incurred, and value of the properties used in the subsidy year.

(2) Where an adjustment results in an increase in the Estimated Subsidy Payment upon which the financial assistance agreement is based, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year. However, if the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent in one of the Financial Status Reports (§ 1121.47) issued during the first ten months of the subsidy year or the increase results from an expense preapproved by the subsidizer, the adjusted amount shall be included in the final annual payment.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7625, Feb. 24, 1978]

§ 1121.41 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101-Freight.* The revenue assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad,

derived from waybills and other source documents, for all traffic that:

(1) Originates or terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier.

All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental; Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debt; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Conversion Chart For Revenue Accounts*

Revenue account title	Previous account No.	Present account No.
Freight	101,109	101
Switching	110	104
Water transfers	113	105
Demurrage	137	106
Incidental	130, 132, 133, 135, 138, 139, 141, 142, 143	110
Joint facility-credit	151	121
Joint facility-debt	152	122
Revenues from property used in other than carrier operations, less expenses	502, 511	506, 534
Miscellaneous rent income	510	510
Miscellaneous income	519	519

§ 1121.42 Calculation of avoidable costs.

This section defines: Which cost elements are eligible for inclusion in the calculation of avoidable costs; the conditions under which certain cost elements become eligible for inclusion; and the basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis. The avoidable costs of providing freight service on a branch shall be the total of the costs assigned to the branch in accordance with this section. Those expenses apportioned under this section shall be derived from the latest Form R-1 or Form R-2 of the railroad filed with the ICC prior to the conclusion of the subsidy year, and assigned to the branch according to the procedures set forth in § 1121.43 of these regulations. When the term ––Actual" is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch. The accounts in the following charts, which list only the ––freight-only" account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
(a) Maintenance of way and structures			
(1) Administration:			
Track			
Salaries and wages	201	11-13-02	Actual.
Materials		21-13-02	Do.
Purchased services		41-13-02	Do.
Other expenses		61-13-02	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Bridges and buildings			
Salaries and wages	201	11-13-03	Actual.
Materials		21-13-03	Do.
Purchased services		41-13-03	Do.
Other expenses		61-13-03	Do.
Signals			
Salaries and wages	201	11-13-04	Do.
Materials		21-13-04	Do.
Purchased services		41-13-04	Do.
Other expenses		61-13-04	Do.
Communications			
Salaries and wages	201	11-13-05	Do.
Materials		21-13-05	Do.
Purchased services		41-13-05	Do.
Other expenses		61-13-05	Do.
Other			
Salaries and wages	201	11-13-06	Do.
Materials		21-13-06	Do.
Purchased services		41-13-06	Do.
Other expenses		61-13-06	Do.
(2) Repair maintenance and other roadway—running			
Salaries and wages	202	11-11-10	Do.
Materials		21-11-10	Do.
Repairs by others—DR		39-11-10	Do.
Repairs for others—CR		40-11-10	Do.
Purchased services		41-11-10	Do.
Other expenses		61-11-10	Do.
Roadway—switching			
Salaries and wages	202	11-12-10	Do.
Materials		21-12-10	Do.
Repairs by others—DR		39-12-10	Do.
Repairs for others—CR		40-12-10	Do.
Purchased services		41-12-10	Do.
Other expenses		61-12-10	Do.
Tunnels and subways—running			
Salaries and wages	206	11-11-11	Do.
Materials		21-11-11	Do.
Repairs by others—DR		39-11-11	Do.
Repairs for others—CR		40-11-11	Do.
Purchased services		41-11-11	Do.
Other expenses		61-11-11	Do.
Tunnels and subways—switching			
Salaries and wages	206	11-12-11	Do.
Materials		21-12-11	Do.
Repairs by others—DR		39-12-11	Do.
Repairs for others—CR		40-12-11	Do.
Purchased services		41-12-11	Do.
Other expenses		61-12-11	Do.
Bridges and culverts—running			
Salaries and wages	208-210	11-11-12	Do.
Materials		21-11-12	Do.
Repairs by others—DR		39-11-12	Do.
Repairs for others—CR		40-11-12	Do.
Purchased services		41-11-12	Do.
Other expenses		61-11-12	Do.
Bridges and culverts—switching			
Salaries and wages	208-210	11-12-12	Do.
Materials		21-12-12	Do.
Repairs by others—DR		39-12-12	Do.
Repairs for others—CR		40-12-12	Do.
Purchased services		41-12-12	Do.
Other expenses		61-12-12	Do.
Ties—running—material	212	21-11-13	Do.
Ties—switching—material	212	21-12-13	Do.
Rails—running—material	214	21-11-14	Do.
Rails—switching—material	214	21-12-14	Do.
Other track material—running—material	216	21-11-15	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Bridges and culverts—switching—Continued			
Other track material—switching—material	216	21-12-15	Actual.
Ballast—running—material	218	21-11-16	Do.
Ballast—switching—material	218	21-12-16	Do.
Track laying and surfacing—running			
Salaries and wages	220	11-11-17	Do.
Materials		21-11-17	Do.
Repairs by others—DR		39-11-17	Do.
Repairs for others—CR		40-11-17	Do.
Purchased services		41-11-17	Do.
Other expenses		61-11-17	Do.
Track laying and surfacing—switching			
Salaries and wages	220	11-12-17	Do.
Materials		21-12-17	Do.
Repairs by others—DR		39-12-17	Do.
Repairs for others—CR		40-12-17	Do.
Purchased services		41-12-17	Do.
Other expenses		61-12-17	Do.
Road property damaged—running			
Salaries and wages	202-220, 249	11-11-48	Do.
Materials		21-11-48	Do.
Repairs by others—DR		39-11-48	Do.
Repairs for others—CR		40-11-48	Do.
Purchased services		41-11-48	Do.
Other expenses		61-11-48	Do.
Road property damaged—switching			
Salaries and wages	202-220, 249	11-12-48	Do.
Materials		21-12-48	Do.
Repairs by others—DR		39-12-48	Do.
Repairs for others—CR		40-12-48	Do.
Purchased services		41-12-48	Do.
Other Expenses		61-12-48	Do.
Road property damaged—other			
Salaries and wages	221, 227-247	11-13-48	Do.
Materials	253, 257	21-13-48	Do.
Repairs by others—DR	265, 269	39-13-48	Do.
Repairs for others—CR		40-13-48	Do.
Purchased services		41-13-48	Do.
Other expenses		61-13-48	Do.
Signals and interlockers—running			
Salaries and wages	249	11-11-19	Do.
Materials		21-11-19	Do.
Repairs by others—DR		39-11-19	Do.
Repairs for others—CR		40-11-19	Do.
Purchased services		41-11-19	Do.
Other expenses		61-11-19	Do.
Signals and interlockers—switching			
Salaries and wages	249	11-12-19	Do.
Materials		21-12-19	Do.
Repairs by others—DR		39-12-19	Do.
Repairs for others—CR		40-12-19	Do.
Purchased services		41-12-19	Do.
Other expenses		61-12-19	Do.
Communications systems			
Salaries and wages	247	11-13-20	Do.
Materials		21-13-20	Do.
Repairs by others—DR		39-13-20	Do.
Repairs for others—CR		40-13-20	Do.
Purchased services		41-13-20	Do.
Other expenses		61-13-20	Do.
Electric power systems			
Salaries and wages	253, 257, 304	11-13-21	Do.
Materials		21-13-21	Do.
Repairs by others—DR		39-13-21	Do.
Repairs for others—CR		40-13-21	Do.
Purchased services		41-13-21	Do.
Other expenses		61-13-21	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Highway grade crossings—running			
Salaries and wages	273	11-11-22	Actual.
Materials		21-11-22	Do.
Repairs by others—DR		39-11-22	Do.
Repairs for others—CR		40-11-22	Do.
Purchased services		41-11-22	Do.
Other expenses		61-11-22	Do.
Highway grade crossings—switching			
Salaries and wages	273	11-12-22	Do.
Materials		21-12-22	Do.
Repairs by others—DR		39-12-22	Do.
Repairs for others—CR		40-12-22	Do.
Purchased services		41-12-22	Do.
Other expenses		61-12-22	Do.
Station and office buildings			
Salaries and wages	227	11-13-23	Do.
Materials		21-13-23	Do.
Repairs by others—DR		39-13-23	Do.
Repairs for others—CR		40-13-23	Do.
Purchased services		41-13-23	Do.
Other expenses		61-13-23	Do.
Station buildings—locomotives			
Salaries and wages	235, 253	11-13-24	Do.
Materials	and 257	21-13-24	Do.
Repairs by others—DR		39-13-24	Do.
Repairs for others—CR		40-13-24	Do.
Purchased services		41-13-24	Do.
Other expenses		61-13-24	Do
Shop buildings—freight cars			
Salaries and wages	235, 253	11-13-25	Do.
Materials	and 257	21-13-25	Do.
Repairs by others—DR		39-13-25	Do.
Repairs for others—CR		40-13-25	Do.
Purchased services		41-13-25	Do.
Other expenses		61-13-25	Do.
Shop buildings—other equipment			
Salaries and wages	235, 253	11-13-26	Do.
Materials	and 257	21-13-26	Do.
Repairs by others—DR		39-13-26	Do.
Repairs for others—CR		40-13-26	Do.
Purchased services		41-13-26	Do.
Other expenses		61-13-26	Do.
Locomotive servicing facilities			
Salaries and wages	231, 233	11-13-27	Do.
Materials		21-13-27	Do.
Repairs by others—DR		39-13-27	Do.
Repairs for others—CR		40-13-27	Do.
Purchased services		41-13-27	Do.
Other expenses		61-13-27	Do.
Miscellaneous buildings and structures			
Salaries and wages	221, 229, 239,	11-13-28	Do.
Materials	265, 304	21-13-28	Do.
Repairs by others—DR		39-13-28	Do.
Repairs for others—CR		40-13-28	Do.
Purchased services		41-13-28	Do.
Other expenses		61-13-28	Do.
Coal terminals			
Salaries and wages	243	11-13-29	Do.
Materials		21-13-29	Do.
Repairs by others—DR		39-13-29	Do.
Repairs for others—CR		40-13-29	Do.
Purchased services		41-13-29	Do.
Other expenses		61-13-29	Do.
Ore terminals			
Salaries and wages	243	11-13-30	Do.
Materials		21-13-30	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Ore Terminals—Continued			
Repairs by others—DR		39-13-30	Actual.
Repairs for others—CR		40-13-30	Do.
Purchased services		41-13-30	Do.
Other expenses		61-13-30	Do.
TOFC/COFC terminals			
Salaries and wages	244	11-13-31	Do.
Materials		21-13-31	Do.
Repairs by others—DR		39-13-31	Do.
Repairs for others—CR		40-13-31	Do.
Purchased services		41-13-21	Do.
Other expenses		61-13-31	Do.
Other marine terminals			
Salaries and wages	241	11-13-32	Do.
Materials		21-13-32	Do.
Repairs by others—DR		39-13-32	Do.
Repairs for others—CR		40-13-32	Do.
Purchased services		41-13-32	Do.
Other expenses		61-13-32	Do.
Motor vehicle loading and distribution facilities			
Salaries and wages	227	11-13-33	Do.
Materials		21-13-33	Do.
Repairs by others—DR		39-13-33	Do.
Repairs for others—CR		40-13-33	Do.
Purchased services		41-13-33	Do.
Other expenses		61-13-33	Do.
Facilities for other specialized service operations			
Salaries and wages	227, 237	11-13-35	Do.
Materials		21-13-35	Do.
Repairs by others—DR		39-13-35	Do.
Repairs for others—CR		40-13-35	Do.
Purchased services		41-13-35	Do.
Other expenses		61-13-35	Do.
Roadway machines			
Salaries and wages	269	11-13-36	Daily repair costs per GMA, for each type of machine used on the branch line sec. 1121.43(a)(1).
Materials		21-13-36	Do.
Repairs by others—DR		39-13-36	Do.
Repairs for others—CR		40-13-36	Do.
Purchased services		41-13-36	Do.
Other expenses		61-13-36	Do.
Small tools and supplies			
Salaries and wages			
Materials			
Repairs by others—DR			
Repairs for others—CR			
Purchased services			
Other expenses	271	11-13-37	Assign supplies on the daily costs per GMA, for each type of machine used on the branch; small tool assign to maintenance of way 11-11/12-10 through 17, and 48, sec. 1121.43(a)(2).
Materials		21-13-37	Do.
Repairs by others—DR		39-13-37	Do.
Repairs for others—CR		40-13-37	Do.
Purchased services		41-13-37	Do.
Other expenses		61-13-37	Do.
Snow removal			
Salaries and wages	272	11-13-38	Actual.
		21-13-38	Do.
		39-13-38	Do.
		40-13-38	Do.
		41-13-38	Do.
		61-13-38	Do.
Fringe benefits—running	277, 457	12-11-00	11-11-XX, sec. 1121.43(a)(3)(i).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Fringe benefits—switching	277, 457	12-12-00	11-12-XX, sec. 1121.43(a)(3)(ii).
Fringe benefits—other	277, 457	12-13-00	11-13-XX, sec. 1121.43(a)(3)(iii).
Casualties and insurance—running			
Other casualties	274	52-11-00	Actual.
Insurance	275	53-11-00	Do.
Casualties and insurance—switching			
Other casualties	274	52-12-00	Do.
Insurance	275	53-12-00	Do.
Lease rentals—debit—running	542	31-11-00	Do.
Lease rentals—debit—switching	542	31-12-00	Do.
Lease rentals—debit—other	542	31-13-00	Do.
Lease rentals—credit—running	509	32-11-00	Do.
Lease rentals—credit—switching	509	32-12-00	Do.
Lease rentals—credit—other	509	32-13-00	Do.
Joint facility rent—debit—running	541	33-11-00	Do.
Joint facility rent—debit—switching	541	33-12-00	Do.
Casualties and insurance—other			
Other casualties	274, 420	52-13-00	Do.
Insurance	275	53-13-00	Do.
Joint facility—debit—other	541	33-13-00	Do.
Joint facility rent—credit—running	508	34-11-00	Do.
Joint facility rent—credit—switching	508	34-12-00	Do.
Joint facility rent—credit—other	508	34-13-00	Do.
Other rents—debit—running	543	35-11-00	Do.
Other rents—debit—switching	543	35-12-00	Do.
Other rents—debit—other	543	35-13-00	Do.
Other rents—credit—running	510	36-11-00	Do.
Other rents—credit—switching	510	36-12-00	Do.
Other rents—credit—other	510	36-13-00	Do.
Depreciation—running	266	62-11-00	Do.
Depreciation—switching	266	62-12-00	Do.
Depreciation—other	266, 305	62-13-00	Do.
Joint facility—debit—running	278	37-11-00	Do.
Joint facility—debit—switching	278	37-12-00	Do.
Joint facility—debit—other	278	37-13-00	Do.
Joint facility—credit—running	279	38-11-00	Do.
Joint facility—credit—switching	279	38-12-00	Do.
Joint facility—credit—other	279	38-13-00	Do.
Dismantling retired road property—running			
Salaries and wages	270	11-11-39	Do.
Materials		21-11-39	Do.
Purchased services		41-11-39	Do.
Other expenses		61-11-39	Do.
Dismantling retired road property—switching			
Salaries and wages	270	11-12-39	Do.
Materials		21-12-39	Do.
Purchased services		41-12-39	Do.
Other expenses		61-12-39	Do.
Dismantling retired road property—other			
Salaries and wages	270, 306	11-13-39	Do.
Materials		21-13-39	Do.
Purchased services		41-13-39	Do.
Other expenses		61-13-39	Do.
Other—running			
Salaries and wages	281-282, 274	11-11-99	Do.
Materials		21-11-99	Do.
Purchased services		41-11-99	Do.
Other expenses		61-11-99	Do.
Other—switching			
Salaries and wages	281-282, 274	11-12-99	Do.
Materials		21-12-99	Do.
Purchased Services		41-12-99	Do.
Other Expenses		61-12-99	Do.
Other—other			
Salaries and wages	281-282, 274	11-13-99	Do.
Materials		21-13-99	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other—other—Continued			
Purchased services		41-13-99	Actual.
Other expenses		61-13-99	Do.
(b) Maintenance of equipment			
(1) Locomotives:			
Administration			
Salaries and wages	301	11-21-01	Do.
Materials		21-21-01	Do.
Purchased services		41-21-01	Do.
Other expenses		61-21-01	Do.
Repairs and maintenance			
Salaries and wages	311	11-21-41	Road diesel and road electric locomotive gross ton miles. Yard diesel and yard electric locomotive unit hours, §1121.43(b)(1).
Materials		21-21-41	Do.
Repairs by others—DR		39-21-41	Do.
Repairs for others—CR		40-21-41	Do.
Purchased services		41-21-41	Do.
Other expenses		61-21-41	Do.
Machinery repair			
Salaries and wages	302	11-21-40	Actual.
Materials		21-21-40	Do.
Repairs by others—DR		39-21-40	Do.
Repairs for others—CR		40-21-40	Do.
Purchased services		41-21-40	Do.
Other expenses		61-21-40	Do.
Equipment damaged			
Salaries and wages	311	11-21-48	Do.
Materials		21-21-48	Do.
Repairs by others—DR		39-21-48	Do.
Repairs for others—CR		40-21-48	Do.
Purchased services		41-21-48	Do.
Other expenses		61-21-48	Do.
Equipment damaged			
Fringe benefits	335, 457	12-21-00	11-21-XX, sec. 1121.43(b)(3)(i).
Other casualties and insurance			
Other casualties	332	52-21-00	Actual.
Insurance	333	53-21-00	Do.
Lease rentals—debit	537	31-21-00	Do.
Lease rentals—credit	504	32-21-00	Do.
Joint facility rent—debit	541	33-21-00	Do.
Joint facility rent—credit	508	34-21-00	Do.
Other rents—debit	537	35-21-00	Do.
Other rents—credit	504	36-21-00	Do.
Joint facility—debit	336	37-21-00	Do.
Joint facility—credit	337	38-21-00	Do.
Depreciation	331, 305	62-21-00	All locomotives, locomotive unit hours, sec. 1121.43(b)(2).
Dismantling retired property			
Salaries and wages	306, 329	11-21-39	Actual.
Materials		21-21-39	Do.
Purchased services		41-21-39	Do.
Other expenses		61-21-39	Do.
Other			
Salaries and wages	339, 332	11-21-99	Do.
Materials	339	21-21-99	Do.
Purchased services	339	41-21-99	Do.
Other expenses	339, 332	61-21-99	Do.
(2) Freight cars:			
Administration			
Salaries and wages	301	11-22-01	Do.
Materials		21-22-01	Do.
Purchased services		41-22-01	Do.
Other expenses		61-22-01	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Machinery repair			
Salaries and wages	302	11-22-40	Actual.
Materials		21-22-40	Do.
Repairs by others—DR		39-22-40	Do.
Repairs for others—CR		40-22-40	Do.
Purchased services		41-22-40	Do.
Other expenses		61-22-40	Do.
Equipment damage			
Salaries and wages	314	11-22-48	Do.
Materials		21-22-48	Do.
Repairs by others—DR		39-22-48	Do.
Repairs for others—CR		40-22-48	Do.
Purchased services		41-22-48	Do.
Other expenses		61-22-48	Do.
Fringe benefits	335, 457	12-22-00	11-22-XX, sec. 1121.43-(b)(3)(iii).
Other casualties and insurance			
Other casualties	332	52-22-00	Actual.
Insurance	333	53-22-00	Do.
Joint facility rent—DR	541	33-22-00	Do.
Joint facility rent—CR	508	34-22-00	Do.
Joint facility—DR	336	37-22-00	Do.
Joint facility—CR	337	38-22-00	Do.
Dismantling retired property			
Salaries and wages	306, 329	11-22-39	Do.
Materials		21-22-39	Do.
Purchased services		41-22-39	Do.
Other expenses		61-22-39	Do.
Other			
Salaries and wages	330, 339, 332	11-22-99	Do.
Materials		21-22-99	Do.
Purchased services		41-22-99	Do.
Other expenses		61-22-99	Do.
Freight car costs per day and per mile:			
Repair and maintenance			
Salaries and wages	314	11-22-42	These accounts are used to develop the cost per car day and per car mile for each type of car, sec. 1121.42(g).
Materials		21-22-42	Do.
Repairs by others—DR		39-22-42	Do.
Repairs for others—CR		40-22-42	Do.
Purchased services		41-22-42	Do.
Other expenses		61-22-42	Do.
Lease rentals—DR	536	31-22-00	
Lease rentals—CR	503	32-22-00	
Depreciation	331, 305	62-22-00	
Other rents—DR	536	35-22-00	
Other rents—CR	503	36-22-00	
(3) Other equipment:			
Administration			
Salaries and wages	301	11-23-01	Actual.
Materials		21-23-01	Do.
Purchased services		41-23-01	Do.
Other expenses		61-23-01	Do.
Repair and maintenance:			
Trucks, trailers and containers—revenue service			
Salaries and wages	318	11-23-43	Do.
Materials		21-23-43	Do.
Repairs by others—DR		39-23-43	Do.
Repairs for others—CR		40-23-43	Do.
Purchased services		41-23-43	Do.
Other expenses		61-23-43	Do.
Floating equipment—revenue service			
Salaries and wages	323	11-23-44	Do.
Materials		21-23-44	Do.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Floating equipment—revenue service—Continued			
Repairs by others—DR		39-23-44	Actual.
Repairs for others—CR		40-23-44	Do.
Purchased services		41-23-44	Do.
Other expenses		61-23-44	Do.
Computer and data processing			
Salaries and wages	(1)	11-23-46	Do.
Materials		21-23-46	Do.
Repairs by others—DR		39-23-46	Do.
Repairs for others—CR		40-23-46	Do.
Purchased services		41-23-46	Do.
Other expenses		61-23-46	Do.
Machinery			
Salaries and wages	302	11-23-40	Do.
materials		21-23-40	Do.
Repairs by others—DR		39-23-40	Do.
Repairs for others—CR		40-23-40	Do.
Purchased services		41-23-40	Do.
Other expenses		61-23-40	Do.
Work and other non revenue equipment			
Salaries and wages	326, 328	11-23-47	Do.
Materials		21-23-47	Do.
Repairs by others—DR		39-23-47	Do.
Repairs for others—CR		40-23-47	Do.
Purchased services		41-23-47	Do.
Other expenses		61-23-47	Do.
Equipment damaged			
Salaries and wages	318, 323, 326, 328	11-23-48	Do.
Materials		21-23-48	Do.
Repairs by others—DR		39-23-48	Do.
Repairs for others—CR		40-23-38	Do.
Purchased services		41-23-48	Do.
Other expenses		61-23-48	Do.
Equipment damaged			
Fringe benefits	335, 457	12-23-00	11-23-XX, sec. 1121.43(b)(3)(ii).
Other casualties and insurance			
Other casualties	332	52-23-00	Actual.
Insurance	333	53-23-00	Do.
Lease rentals—DR	539, 540	31-23-00	Do.
Lease rentals—CR	506, 507	32-23-00	Do.
Joint facility rent—DR	541	33-23-00	Do.
Joint facility rent—CR	508	34-23-00	Do.
Other rents—DR	539, 540	35-23-00	Do.
Other rents—CR	506, 507	36-23-00	Do.
Depreciation	331, 305	62-23-00	Do.
Joint facility—DR	336	37-23-00	Do.
Joint facility—CR	337	38-23-00	Do.
Dismantling retired property			
Salaries and wages	306, 329	11-23-39	Do.
Materials		21-23-39	Do.
Purchased services		41-23-39	Do.
Other expenses		61-23-39	Do.
Other			
Salaries and wages	339, 332	11-23-99	Do.
Materials	339	21-23-99	Do.
Purchased services	339	41-23-99	Do.
Other expenses	339, 332	61-23-99	Do.
(c) Transportation			
(1) Train operations:			
Administration			
Salaries and wages	371	11-31-01	Do.
Materials		21-31-01	Do.
Purchased services		41-31-01	Do.
Other expenses		61-31-01	Do.
Engine crews			
Salaries and wages	392	11-31-56	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Engine Crews—Continued			
Materials	402	21-31-56	Train hours, sec. 1121.43(c)(1)(i).
Purchased services	402	41-31-56	Actual.
Other expenses	402	61-31-56	Do.
Train crews			
Salaries and wages	401	11-31-57	Do.
Materials	402	21-31-57	Train hours, sec. 1121.43(c)(1)(i).
Purchased services	402	41-31-57	Actual.
Other expenses	402	61-31-57	Do.
Dispatching trains			
Salaries and wages	372	11-31-58	Do.
Materials		21-31-58	Do.
Purchased services		41-31-58	Do.
Other experses		61-31-58	Do.
Operating signals and interlockers			
Salaries and wages	40[illegible]	11-31-59	Do.
Materials		21-31-59	Do.
Purchased services		41-31-59	Do.
Other expenses		61-31-59	Do.
Operating drawbridges			
Salaries and wages	406	11-31-60	Do.
Materials		21-31-60	Do.
Purchased services		41-31-60	Do.
Other expenses		61-31-60	Do.
Highway crossing protection			
Salaries and wages	405	11-31-61	Do.
Materials		21-31-61	Do.
Purchased services		41-31-61	Do.
Other expenses		61-31-61	Do.
Train and inspection and lubrication			
Salaries and wages	314, 402, 311	11-31-62	Train hours, sec 1121.43(c)(1)(i).
Materials		21-31-62	Do.
Purchased services		41-31-62	Actual.
Other expenses		61-31-62	Do.
Locomotive fuel			
Salaries and wages			
Materials			
Purchased services			
Other expenses	394	11-31-671-31-6741-31-6761-31-67	Diesel locomotive unit hours, Sec. 1121.43(c)(1)(ii).
Electric power purchased or produced for motive power			
Salaries and wages	395, 445	11-31-68	Electric locomotive unit hours, sec. 1121.43(c)(1)(iii).
Materials	395, 445	21-31-68	Do.
Purchased services	395, 396, 445	41-31-68	Do
Other expenses	395, 445	61-31-68	Do.
Servicing locomotives			
Salaries and wages	400	11-31-69	Locomotive unit miles, sec. 1121.43(c)(1)(iv).
Materials		21-31-69	Do.
Purchased services		41-31-69	Do.
Other expenses		61-31-69	Do.
Freight lost or damaged—solely related	418, 419	51-31-00	Actual.
Clearing wrecks			
Salaries and wages	415	11-31-63	Do.
Materials		21-31-63	Do.
Purchased services		41-31-63	Do.
Other expenses		61-31-63	Do.
Fringe benefits	409, 457	12-31-00	11-31-XX, sec. 1121.43(c)(4)(i).
Other casualties and insurance			
Other casualties	416, 417, 420	52-31-00	Actual.
Insurance	414	53-31-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other casualties and insurance—Continued			
Joint facility—DR	412	37-31-00	Actual.
Joint facility—CR	413	38-31-00	Do.
Other			
Salaries and wages	402, 411, 420	11-31-99	Do.
Materials		21-31-99	Do.
Purchased services		41-31-99	Do.
Other expenses		61-31-99	Do.
(2) Yard operations:			
Administration			
Salaries and wages	371	11-32-01	Do.
Materials		21-32-01	Do.
Purchased services		41-32-01	Do.
Other expenses		61-32-01	Do.
Switch crews			
Salaries and wages	378, 380	11-32-64	Do.
Materials	389	21-32-64	Locomotive unit hours, sec. 1121.43(c)(2)(i)
Purchased services	389	41-32-64	Actual.
Other expenses	389	61-32-64	Do.
Controlling operations			
Salaries and wages	377	11-32-65	Do.
Materials	389	21-32-65	Do.
Purchased services	389	41-32-65	Do.
Other expenses	389	61-32-65	Do.
Yard and terminal clerical			
Salaries and wages	377	11-32-66	Actual.
Materials	389	21-32-66	Do.
Purchased services	389	41-32-66	Do.
Other expenses	389	61-32-66	Do.
Operating switches, signals, retarders and humps			
Salaries and wages	379	11-32-59	Do.
Materials	389	21-32-59	Do.
Purchased services	389	41-32-59	Do.
Other expenses	389	61-32-59	Do.
Locomotive fuel			
Salaries and wages	382	11-32-67	Diesel locomotive unit hours, sec. 1121.43(c)(2)(ii)
Materials		21-32-67	Do.
Purchased services		41-32-67	Do.
Other expenses		61-32-67	Do.
Electric power purchased or produced for motive power			
Salaries and wages	383, 445	11-32-68	Electric locomotive unit hours, sec. 1121.43(c)(2)(iii).
Materials	383, 445	21-32-68	Do.
Purchased services	383, 384, 445	41-32-68	Do.
Other expenses	383, 445	61-32-68	Do.
Servicing locomotives			
Salaries and wages	388	11-32-69	Locomotive unit hours, sec. 1121.43(c)(2)(i).
Materials		21-32-69	Do.
Purchased services		41-32-69	Do.
Other expenses		61-32-69	Do.
Freight lost or damaged—solely related	418, 419	51-32-00	Actual.
Clearing wrecks			
Salaries and wages	415	11-32-63	Do.
Materials		21-32-63	Do.
Purchased services		41-32-63	Do.
Other expenses		61-32-63	Do.
Fringe benefits	409, 457	12-32-00	11-32-XX, sec. 1121.43-(c)(4)(ii).
Other casualties and insurance			
Other casualties	416, 420	52-32-00	Actual.
Insurance	414	53-32-00	Do.
Joint facility—DR	390, 412	37-32-00	Do.
Joint facility—CR	391, 413	38-32-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other			
Salaries and wages	411, 420	11-32-99	Actual.
Materials		21-32-99	Do.
Purchased services		41-32-99	Do.
Other expenses		61-32-99	Do.
(3) Train and yard operations common:			
Cleaning car interiors			
Salaries and wages	402	11-33-70	Do.
Materials		21-33-70	Do.
Purchased services		41-33-70	Do.
Adjusting and transferring loads			
Salaries and wages	373, 402	11-33-71	Do.
Materials	376, 402	21-33-71	Do.
Purchased services	376, 402	41-33-71	Do.
Carloading devices and grain doors			
Salaries and wages	402	11-33-72	Do.
Materials		21-33-72	Do.
Purchased services		41-33-72	Do.
Freight lost or damaged—all other	418, 419	51-33-00	Do.
Fringe benefits	409	12-33-00	11-33-XX, sec. 1121.43(c)(4)(iii).
(4) Specialized service operations:			
Administration			
Salaries and wages	371, 408, 443	11-34-01	Actual.
Materials		21-34-01	Dc.
Purchased services		41-34-01	Do.
Other expenses		61-34-01	Do.
Pick-up and delivery, marine line haul, and rail substitute service			
Salaries and wages	408, 421, 422	11-34-73	Do.
Materials		21-34-73	Do.
Purchased services		41-34-73	Do.
Other expenses		61-34-73	Do.
Loading and unloading and local marine			
Salaries and wages	375, 408, 421	11-34-74	Do.
Materials	422 and 443	21-34-74	Do.
Purchased services		41-34-74	Do.
Other expenses		61-34-74	Do.
Protective services			
Salaries and wages	402, 421, 422, 443	11-34-75	Do.
Materials		21-34-75	Do.
Purchased services		41-34-75	Do.
Other expenses		61-34-75	Do.
Freight lost or damaged—Solely related	418, 419	51-34-00	Do.
Fringe benefits	409, 457, 449	12--34-00	11-34-XX, sec 1121.43-(c)(4)(iv).
Casualties and insurance			
Other casualties	416, 420	52-34-00	Actual.
Insurance	414	53-34-00	Do.
Joint facility—DR	412, 447	37-34-00	Do.
Joint facility—CR	413, 448	38-34-00	Do.
Other			
Salaries and wages	411, 442, 446. 420	11-34-99	Do.
Materials		21-34-99	Do.
Purchased services		41-34-99	Do.
Other expenses		61-34-99	Do.
(5) Administrative support operations:			
Administration			
Salaries and wages	371	11-35-01	Do.
Materials		21-35-01	Do.
Purchased services		41-35-01	Do.
Other expenses		61-35-01	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Employees performing clerical and accounting functions			
Salaries and wages	373	11-35-76	Actual.
Materials	376	21-35-76	Do.
Purchased services	376	41-35-76	Do.
Other expenses	376	61-35-76	Do.
Communication systems operation			
Salaries and wages	373, 407	11-35-77	Do.
Materials	376, 407	21-35-77	Do.
Purchased services	376, 407	41-35-77	Do.
Other expenses	376, 407	61-35-77	Do.
Loss and damage claims processing			
Salaries and wages	418, 419	11-35-78	Number of claims, sec. 1121.43(c)(3)(i).
Materials		21-35-78	Do.
Purchased services		41-35-78	Do.
Other expenses		61-35-78	Do.
Fringe benefits	409, 457	12-35-00	11-35-XX, sec. 1121.43-(c)(4)(v).
Joint facility—DR	412, 447	37-35-00	Actual.
Joint facility—CR	413, 448	38-35-00	Do.
Casualties and insurance			
Other casualties	416, 420	52-35-00	Do.
Insurance	414	53-35-00	Do.
Other			
Salaries and wages	411, 420	11-35-99	Do.
Materials	411	21-35-99	Do.
Purchased services	411	41-35-99	Do.
Other expenses	411, 420	61-35-99	Do.
(d) General Administrative			
Officers—general administration			
Salaries and wages	351, 451, 452	11-61-01	Do.
Materials		21-61-01	Do.
Purchased services		41-61-01	Do.
Other expenses		61-61-01	Do.
Accounting, auditing and finance			
Salaries and wages	452, 451	11-61-86	Do.
Materials		21-61-86	Do.
Purchased services		41-61-86	Do.
Other expenses		61-61-86	Do.
Management services and data processing			
Salaries and wages	452, 451	11-61-87	Do.
Materials		21-61-87	Do.
Purchased services		41-61-87	Do.
Other expenses		61-61-87	Do.
Marketing			
Salaries and wages	352	11-61-88	Do.
Materials		21-61-88	Do.
Purchased services		41-61-88	Do.
Other expenses		61-61-88	Do.
Sales			
Salaries and wages	352	11-61-89	Do.
Materials		21-61-89	Do.
Purchased services		41-61-89	Do.
Other expenses		61-61-89	Do.
Industrial development			
Salaries and wages	356, 452, 451	11-61-90	Do.
Materials		21-61-90	Do.
Purchased services		41-61-90	Do.
Other expenses		61-61-90	Do.
Personnel and labor relations			
Salaries and wages	452, 451	11-61-91	Do.
Materials		21-61-91	Do.
Purchased services		41-61-91	Do.
Other expenses		61-61-91	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Legal and secretarial			
Salaries and wages	452, 454, 274	11-61-92	Actual
Materials	332 and 420	21-61-92	Do.
Purchased services		41-61-92	Do.
Other expenses		61-61-92	Do.
Public relations and advertising			
Salaries and wages	353, 354	11-61-93	Do.
Materials		21-61-93	Do.
Purchased services		41-61-93	Do.
Other expenses		61-61-93	Do.
Research and development			
Salaries and wages	(1)	11-61-94	Do.
Materials		21-61-94	Do.
Purchased services		41-61-94	Do.
Other expenses		61-61-94	Do.
Fringe benefits	359, 456, 457	12-61-00	11-61-XX, sec. 1121.43(d)(1).
Casualties and insurance			
Other casualties	None	52-61-00	Actual
Insurance	357, 455	53-61-00	Do.
Writedown of uncollectible accounts	706, 707	63-61-00	Do.
Other taxes except on corporate income or payroll	532	65-61-00	Do.
Joint facility—DR	461	37-61-00	Do.
Joint facility—CR	462	38-61-00	Do.
Other			
Salaries and wages	355, 360, 460	11-61-99	Do.
Materials	351, 451, 452	21-61-99	Do.
Purchased services	and 453	41-61-99	Do.
Other expenses		61-61-99	Do.

[1] Various accounts.

(e) *Deadheading, taxi, and hotel costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead movement costs.* The costs assigned under this subsection shall be the actual costs incurred in moving overhead in order to provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight car costs.* For Class I railroads, the on-branch costs for time-mileage freight cars shall be calculated on the basis of the railroad's average costs per day and per mile. The costs per day and per mile shall be calculated separately for each type of car specified in Ex Parte 334 (Car Service Compensation—Basic Per Diem Charges—Formula Revision In Accordance With the Railroad Revitalization and Regulatory Reform Act of 1976). These costs shall include: *Account 11-22-42—Salaries and wages—freight cars—repairs and maintenance; Account 21-22-42—Materials—freight cars—repairs and maintenance; Account 39-22-42—Repairs billed by others (Debit)—freight cars—repairs and maintenance; Account 40-22-42—Repairs billed to others (Credit)—freight cars—repairs and maintenance; Account 41-22-42—Other purchased services—freight cars—repairs and maintenance; Account 61-22-42—Other expenses—freight cars—repairs and maintenance; Account 31-22-00—Lease rentals (Debit)—freight cars; Account 32-22-00—Lease Rentals (Credit)—freight cars; Account 35-22-00—Other rents (Debit)—freight cars; Account 26-22-00—Other rents (Credit)—freight cars; and Account 62-22-00—Depreciation—freight cars;* and the return on investment in freight cars. The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time related costs and mileage related costs on the basis of the present Rail Form

A apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Return on investment shall be treated as a 100 percent time-related cost. The system total receipts and payments for the hire of time mileage cars and the basic data used in the development of the car-day and car-mile factors shall be taken from the railroad's latest Form R-1 and company records. The specific steps to complete the calculations are as follows:

(1) The total system car days by car type shall be calculated by averaging the railroad's freight car ownership at the beginning and ending of the year (R-1, schedule 710, columns (b) and (k)); multiplying the average by the standard active number of car days (346) as developed in ICC Docket No. 31358; substracting car days on foreign lines (source: company records) and adding the foreign car days on home line (source: company records). This procedure shall be completed for each car type specified in Ex Parte 334.

(2) The total railroad car miles shall be calculated by adding the loaded car miles for railroad owned and leased cars (Form OSA, column (d), items 5-010 through 5-027) to the empty car miles for railroad owned and leased cars (Form OSA, column (d), items 5-110 through 5-127). The total car miles, loaded and empty shall be calculated for each car type specified in Ex Parte 334.

(3) The cost per car-day shall be calculated for each type of time-mileage car by adding 50 percent of the total freight car repair costs for each car type (R-1, schedule 415, column (b)); 60 percent of the depreciation costs for each car type (R-1, schedule 415, column (c)); 100 percent of return on investment, which shall be calculated by obtaining the net depreciated investment for each car type and multiplying it by the interest rate which applied to the latest equipment trust certificates, conditional sales agreement, or lease entered into by the railroad for the purchase or lease of freight cars; the time portion of the railroad's payments for hire of time-mileage freight cars (R-1, schedule 366, columns (h) and (i)); subtracting the time portion of the railroad's receipts for hire to time-mileage freight cars (R-1, schedule 366, columns (d) and (e)); and dividing the result by the total car days for each car type developed in paragraph (1).

(4) The cost per mile shall be calculated for each type of time-mileage car by adding 50 percent of the total freight train car repair cost for each car type (R-1, schedule 415, column (b)); 40 percent of the total depreciation costs for each car type (R-1, schedule 415, column (c)); the mileage portion of the railroad's payments for the hire of time-mileage freight cars (R-1, schedule 366, column (g)); subtracting the mileage portion of the railroad's receipts for hire of time-mileage of freight cars (R-1, schedule 366, column (c)); and dividing the result by the total car miles for each car type developed in paragraph (2).

(5) The costs per car-day and per car-mile developed in paragraphs (3) and (4) of this section shall be applied to the total car-days and total car miles for each car type accumulated on the branch for all traffic originated and/or terminated on the branch and all bridge traffic handled by the branch during the subsidy period which are attributed to time-mileage freight-train cars. The car-day and car-mile factors shall be furnished by the railroads. The on-branch costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (R-1, schedule 366, column (f)), for each car type; divided by the total miles on which the charges were based. For Class II railroads, the on-branch costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Return on investment—locomotives.* The return on investment in locomotives shall be separated between yard and road with a further separation between diesel and other (electric). The return on investment for each category of locomotives shall be calculated in accordance with the following procedure.

(1) The net investment for each category of locomotives shall be determined from the carrier's records.

(2) The current cost of capital used in the calculation of return on investment for locomotives shall be the rate of interest which applied to the latest equipment trust certificates, conditional sales agreements, or equipment lease agreements entered into by the railroad for the purchase or lease of new locomotives.

(3) The return on investment for all categories of locomotives is calculated by multiplying the net investment in step (1) above by the current costs of capital as determined in step (2).

(4) The return on investment shall be assigned to the branch on the basis of the ratio of locomotive unit hours on the branch to total locomotive unit hours on the system for the applicable classification of locomotive.

(i) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those States that subject the railroad to a revenue tax.

(j) *Property taxes.* (1) The amount of property taxes shall be the amount levied against the property on the branch, in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property, such as track, land, buildings, and other facilities.

(2) In States where property taxes are assessed on the basis of a formula of a State-wide valuation of property and the branch or branches are included in the valuation of the railroad operating the service, the tax on each branch shall be based on the distribution of the assessment by the State to that branch and the application of the appropriate tax rate or rates.

(3) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a State-wide valuation of property, the tax on rolling stock attributable to each branch shall be determined as follows:

(i) Find the percent which the cost of equipment as used in the formula is to the total of all property cost as used in the formula;

(ii) Apply that percentage to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each branch on the basis of car and locomotive unit miles on the branch to total car and locomotive unit miles in the state;

(iv) Apply appropriate tax rate or rates to the allocated assessment thus determined.

(k) *Administrative costs.* The costs assigned under this account shall be the actual costs directly attributable to the administration of the subsidy program or at the option of the carrier, one percent of the total annual revenues attributed to the branch shall be allowable to cover all costs of administering the subsidy program.

(l) *Casualty reserve account.* The costs assigned under this account shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record any costs incurred by the railroad as a result of an accident.

(m) *Rehabilitation.* Rehabilitation costs shall not be included unless: (1) The track involved does not meet minimum Federal Railraod Administration (FRA) Class I safety standards (49 CFR Part 213), in which case the railroad will furnish a detailed estimate of the costs to rehabilitate the track to the minimum level with the abandonment application and provision to cover such costs shall be included in the subsidy agreement; or (2) the potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(n) *Off-branch costs.* Until the ICC revises the Rail Form A cost procedure to facilitate the incorporation of the new USOA as well as review and if necessary change the theories contained within the present formula the procedure for determining the off-branch costs will use the existing Rail Form A formula applied to the latest Annual Report, Form R-1, that has been filed by the railroad using the prior unrevised accounting system. The development of the off-branch costs shall be as follows:

(1) Terminal costs, line-haul car costs, and interchange costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying variable unit costs to the service units attributed to the branch traffic during the subsidy period.

(2) The following through-train, single-line, variable unit costs shall be developed by a Class I railroad by applying Rail Form A to data contained in its latest Form R-1 filed with the Commission:

(i) Normal Rail Form A carload terminal cost per carload by car type.

(ii) Modified Rail Form A, carload terminal cost per carload by car type (i.e., (A) substitute an intertrain switching cost separated between mileage and other than mileage cars, in place of a roadtrain to industry switching cost; (B) substitute modified car ownership costs per car-day for two days developed in accordance with § 1121.42(g)(3) for the standard Rail Form A car ownership cost).

(iii) Rail Form A per hundredweight terminal cost.

(iv) Rail Form A cost per car-mile by car type.

(v) Rail Form A cost per ton-mile.

(vi) Rail Form A cost per car interchanged, separated between mileage and other than mileage cars.

These costs shall be applied by Class I railroads in accordance with the procedure set forth below in § 1121.42(n)(3).

(3) Calculations by car type: (i) The sum of all terminal costs incurred off the branch line shall be calculated by multiplying the modified terminal cost per carload by car type, paragraph (n)(2)(ii) of this section, by the total number of carloads originated or terminated on the branch line during the subsidy year. To this amount add the normal terminal cost per carload by car type, paragraph (n)(2)(i) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(ii) The sum of the hundredweight terminal costs incurred off the branch line shall be calculated by multiplying the hundredweight of freight originated or terminated on the branch that are local to the railroad serving the branch.

(iii) The sum of the line-haul car-mile costs incurred off the branch line shall be calculated by multiplying the car-mile cost by car type, paragraph (n)(2)(iv) of this section, by the loaded car-miles generated off the branch line by cars originated or terminated on the branch during the subsidy year. Where overhead movements to and from the branch have been included in the on-branch cost calculation under other sections of § 1121.42 the related loaded car-miles shall be excluded from this calculation.

(iv) The sum of the line-haul ton-mile costs shall be determined by multiplying the ton-mile cost, paragraph (n)(2)(v) of this section, by the total ton-miles of revenue freight incurred by the railroad on its lines, other than the branch lines, for revenue freight originated or terminated on the branch during the subsidy year.

(v) The interchange cost shall be calculated by multiplying the cost per car interchanged, paragraph (n)(2)(vi) of this section, by the number of carloads of traffic interchanged at a point off the branch line and originated or terminated on the branch.

(4) Class II line-haul railroads shall calculate off-branch costs as follows: (i) The estimated system variable expenses shall be calculated by multiplying the sum of the total operating expenses, rents and taxes, including Federal Income Taxes (schedule 410, total of accounts 201 through 278, columns (b) and (c) and (d)) in the carrier's latest Annual Report (Form R-2) by 0.78, the three-year composite variability ratio for all Class I railroads.

(ii) The cost per ton-mile of revenue freight is calculated by dividing the amount developed in step (i) by the system total ton-miles of revenue freight (schedule 2601, L. 25, col. (d)) in the carrier's latest Annual Report (Form R-2).

(iii) The cost developed in step (ii) shall be applied to the total revenue ton-miles of traffic which is attributable to the branch and which moves over other portions of the railroad's system.

[43 FR 7625, Feb. 24, 1978, as amended at 43 FR 10564, Mar. 14, 1978]

§ 1121.43 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under §§ 1121.42(a), (b), (c), and (d) as having an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(a) *Maintenance of Way and Structures*—(1) *Roadway machines.* All accounts designated XX-13-36 shall be assigned to the branch on the basis of the average repair costs, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on the actual number of days each type of machine is used on the branch.

(2) *Small Tools and Supplies.* All accounts designated XX-13-37 shall be assigned to the branch as follows: (i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch; (ii) the costs of small tools shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 11-11-10 through 11-11-17 and 11-11-48, plus 11-12-10 through 11-12-17 and 11-12-48 bear to the railroad's system total for the same accounts.

(3) *Fringe Benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salary and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe Benefits—Running, Account 12-11-00,* total of all 11-11-XX accounts branch to system;

(ii) *Fringe Benefits—Switching, Account 12-12-00,* total of all 11-12-XX accounts branch to system; and

(iii) *Fringe Benefits—Other, Account 12-13-00,* total of all 11-13-XX accounts branch to system.

(b) *Maintenance of equipment*—(1) *Locomotive repairs and maintenance.* All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be the actual costs for the specific equipment used.

(2) *Locomotive Depreciation—Account 61-22-00,* shall be separated between yard and road with a further separation between diesel and other (electric). The cost shall be assigned to the branch on the ratio of locomotive unit hours on the branch to the total locomotive unit hours on the system for the particular type of locomotive used to serve the branch. The cost assigned under this account for specialized equipment devoted exclusively to branch line service shall be the actual cost for the specific equipment used.

(3) *Fringe Benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salary and wages bear to the system total salaries and wages for each type of equipment as follows: (i) *Locomotives—Account 12-21-00,* total of all 11-21-XX accounts branch to system.

(ii) *Other Equipment—Account 12-23-00,* total of all 11-23-XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car day and car mile cost calcula-

tions, in § 1121.42(g) of these regulations.

To this amount is added the branch totals in the balance of all 11-22-XX accounts. The ratio of this total branch account to the system total for all 11-22-XX accounts is applied to Account 12-22-00, Fringe Benefits—Freight Cars.

(c) *Transportation*—(1) *Train Operations*—(i) *Engine Crews—Materials, Account 21-31-56; Train Crews—Materials, Account 21-31-57; Train Inspection and Lubrication—Salaries and Wages, Account 11-31-62; and Materials—Account 21-31-62.* If the branch is served by a local/way or through train crew, the costs in these accounts shall be assigned to the branch on the ratio of train hours on the branch to the total system train hours.

(ii) *Locomotive Fuel*—All accounts designated XX-31-67 shall be assigned to the branch on the ratio of road diesel locomotive unit hours on the branch to the total system road diesel locomotive unit hours.

(iii) *Electric Power Purchased or Produced for Motive Power*—All accounts designated XX-31-68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing Locomotives*—All accounts designated XX-31-69 shall be assigned to the branch on the ratio of road locomotive unit miles on the branch to the total system road locomotive unit miles.

(2) *Yard Operations*—(i) *Switch Crews—Materials, Account 21-32-64,* and *Servicing Locomotives,* all accounts designated XX-32-69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive Fuel*—All accounts designated XX-32-67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric Power Purchased or Produced for Motive Power*—All accounts designated XX-32-68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations.* (i) *Loss and Damage Claims Processing*—All accounts designated XX-35-78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(4) *Transportation Fringe Benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salary and wages bear to the total system salary and wages for each activity shown below.

(i) *Train Operations, Account 12-31-00,* total of all 11-31-XX accounts branch to system.

(ii) *Yard Operations, Account 12-32-00,* total of all 11-32-XX accounts branch to system.

(iii) *Train and Yard Operations Common, Account 12-33-00,* total of all 11-33-XX accounts branch to system.

(iv) *Specialized Service Operations, Account 12-34-00,* total of all 11-34-XX accounts branch to system.

(v) *Administrative Support, Account 12-35-00,* total of all 11-35-XX accounts branch to system.

(d) *General administrative.* (1) *Fringe Benefits, Account 12-61-00,* shall be assigned to the branch on the ratio that the total branch salary and wages in all 11-61-XX accounts bear to the system total salary and wages in all 11-61-XX accounts.

§ 1121.44 Valuation of rail properties.

The investment base to which the return element shall apply shall be the sum of:

(a) The allowable working capital computed at 15 days on-branch cash avoidable costs (on-branch avoidable costs less depreciation);

(b) The amount of current income tax benefits resulting from abandon-

ment of the line which would have been applicable to the period of the subsidy agreement (this information to be furnished by the railroad and subject to audit by the person offering the subsidy); and

(c) The net liquidation value, for their highest and best use for non-rail purposes, of the rail properties on the line to be subsidized which are used and required for performance of the services requested by the person offering the subsidy. This value shall be determined by computing the current appraised market value of such properties for other than rail transportation purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations.

§ 1121.45 Reasonable return.

(a) A carrier not in reorganization shall furnish to the Commission and to any financially responsible person considering the offer of a rail service continuation payment, a statement, with substantiation, of its current cost of capital, after adjustment for the effects of current Federal and State income taxes.

(b) For a carrier in reorganization, the cost of capital for the purpose of the rail service continuation payment shall be the average yield on all railroad bonds for the week immediately preceding the execution of the subsidy agreement, as quoted by any standard investors' service, adjusted for the effects of Federal or State income taxes (if any), actually incurred by the carrier during the term of the agreement.

(c) The return element of the subsidy payment shall be computed by applying the cost of capital as determined above to the investment base determined pursuant to § 1121.44. The return shall be adjusted annually to reflect the carrier's actual current (cash) effective Federal and State income tax rate. In the event the carrier and the subsidizer cannot agree as to the amount of the return element, this amount will be determined by the Commission, and the Commission's determination shall be final.

§ 1121.46 Submission of revenue and cost data.

The following information shall be submitted by applicant as Exhibit 1 to an abandonment or discontinuance application (§ 1121.32(d)) and shall be developed in accordance with the methodology established in § 1121.41–45, as applicable. Such information, form, and methodology shall also be used by an offeror of financial assistance to formulate a Proposed Subsidy Payment (§ 1121.38).

	Base year operations	Projected subsidy year operations
Revenues attributable for		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues attributable (lines 1 through 3)		
Avoidable costs for		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for		
8. Rehabilitation [1]		
9. Administration costs (subsidy year only) [2]		
10. Casualty reserve account [2]		
11. Total subsidization costs (lines 8 through 10)		
Return on value for		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax benefits		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
15. Avoidable loss from operations (line 4 minus line 7)		
16. Estimated subsidy (line 4 minus lines 7, 11 and 14)		

[1] Projection shall include amounts necessary to attain FRA class I safety standard.

[2] Omit in applications pursuant to secs. 1121.32 and 1121.33.

§ 1121.47 Financial status reports.

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to a financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Significant deviations from the negotiated estimates must be explained. Unless the parties agree otherwise, the last Financial Status Report issued within the first ten months of the subsidy period will be the basis for negotiating the financial assistance agreement for the subsequent subsidy year. The year-end report will be the basis of the subsidy payment adjustment. All data shall be developed in accordance with the methodology set forth in §§ 1121.41-1121.45. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues for		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues (lines 1 through 3)		
Avoidable costs for		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for		
8. Rehabilitation		
9. Administrative costs		
10. Casualty		
11. Total subsidization costs (lines 8 through 10)		
Return on value		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax benefits		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
Subsidy payment		
15. Subsidy payment (line 4 minus lines 7, 11, and 14)		

Subpart E—[Reserved]

Subpart F—Abandonment Procedures for Bankrupt Railroads

AUTHORITY: 49 U.S.C. 10903 et seq., 11 U.S.C. 1170, and secs. 5 and 17 of Pub. L. No. 96-101.

SOURCE: 44 FR 73106, Dec. 17, 1979, unless otherwise noted.

§ 1121.60 Filing and service requirements.

(a) The application for abandonment shall be filed with the Commission at the same time the proposal to abandon is presented to the Bankruptcy Court.

(b) An original and six copies of the application, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. 20423. The original shall bear the date and signature of the officer or other person authorized to file the application, and shall be complete in itself. The signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(c) Service. Concurrent with the filing of an application with the Commission, a copy of the application shall be served on all parties entitled to receive notice under 49 CFR 1121.30.

§ 1121.61 Contents of the application.

Applications filed by bankrupt railroads concerning the abandonment of

railroad lines or the discontinuance of rail service shall contain the following information and each paragraph (a) through (i) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be discontinued is a part of any railroad system.

(4) Relief sought (abandonment of line or discontinuance of service).

(5) Detailed map of the subject line on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(6) Detailed statement of reasons for filing application.

(7) Name, title, address, and telephone number of the representative of applicant to whom correspondence should be sent.

(8) A statement that a response to the application may be submitted to the Commission within 30 days, and must conform to 49 CFR 1121.62.

(9) Certificate of service.

(b) *Condition of properties.* (1) The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration Class I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service provided.* Describe service performed on the line during the most recent full calendar year for which information is available, and that part of the current year for which information is available. This should include: (1) Number of trains operated and their frequency; (2) Miles of track operated (include main line and all railroad-owned sidings); (3) Average number of locomotive units operated; (4) Carload commodity group tonnage on the line; (5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier); (6) Average crew size; (7) Level of maintenance; (8) Any important changes in train service undertaken in the 5 calendar years immediately preceding the filing of the application; and (9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable, avoidable costs and reasonable return on value for the line to be abandoned for the most recent full calendar year (to the extent such branch level data is available), in accordance with the methodology prescribed in § 1121.46, as Exhibit 1.

(2) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operatting income for the calendar year immediately preceding the filing of the application and for that part of the current year for which information is available.

(3) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for the calendar year immediately preceding the filing of the application and for that

part of the current year for which information is available.

(e) *Service area.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1121.11(m), by name, address, principal commodity, and by tonnage and/or carloads for that part of the current year and the previous calendar year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and nature of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(f) *Environmental and energy impact.* The applicant shall submit as a part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with 49 CFR 1106 and 1108.12 (b) and (c). If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference to the location of the required information elsewhere in the abandonment or discontinuance application. Environment information should not be submitted for those cases covered by the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101 (1979).

(g) *Passenger service.* If passenger service is provided on the line, submit a statement of whether appropriate steps have been taken for discontinuance pursuant to 49 U.S.C. 10908 and 10909.

(h) All testimony considered necessary to support the proposal shall be filed with the application in the form of verified statements.

(i) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

VERIFICATION

State of ———— ss. County of ————

———— (Name of affiant) makes oath and says that he is the ———— (Title of Affiant) of the ———— (Name of applicant) applicant herein; that he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Interstate Commerce Commission the foregoing application in AB- ———— (Sub-No. ————); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

————

(Signature)

Subscribed and sworn to before me ———— in and for the State and County above named, this —— day of ————, 19—.

————

My commission expires ————

§ 1121.62 Responses to the application.

(a) *Filing.* The original and six copies of responses to the application shall be filed with the Commission within 30 days of the filing of the application. A copy of each response shall be concurrently served on the carrier and Bankruptcy Court. A certificate of service shall accompany the response.

(b) *Verification.* Each response shall be verified.

State of ———— ss. County of ————

———— (Name of affiant) makes oath and says that he has been authorized to verify and file with the Interstate Commerce Commission the foregoing response in AB- ———— (Sub-No. ————), that he has carefully examined all of the statements in the response; that he has knowledge of the facts and matters relied upon; and that all representations set forth are true and correct to the best of his knowledge, information, and belief.

————

(Signature)

Subscribed and sworn to before me ——— in and for the State and County above named, this —— day of ————, 19—.

———————

My commission expires

———————

(c) *Warning.* The Commission will not consider untimely, unserved, or unverified responses.

§ 1121.63 Report of the Commission.

The Commission, or designee thereof, shall prepare a report for the Bankruptcy Court within the time allotted by the Court pursuant to 11 U.S.C. 1170. The Commission report shall rely on the application and responses.

APPENDIX A

Submission of system diagram maps for publication in the FEDERAL REGISTER shall consist of a cover page on a 8 x 10½ bond paper, and such cover page shall contain the following information:

Cover Page

AB———(SDM)

NAME OF RAILROAD

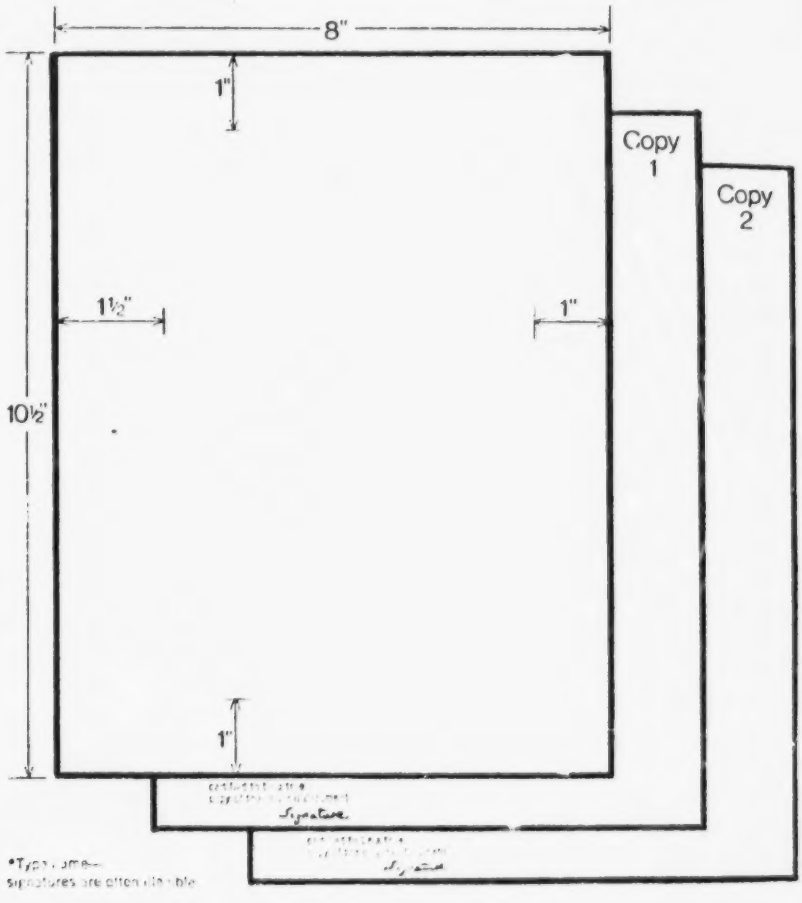
The system diagram maps of the ———, are attached below and are submitted for publication in the FEDERAL REGISTER pursuant to the regulations of the Interstate Commerce Commission as set forth in 49 CFR 1121.22.

———————

Signature

Margins for the cover page and maps in as many pages as may be necessary to comply with the regulations herein adopted, 49 CFR 1121.22, shall be in accordance with the form below.

- Bond paper or legible photocopy.
- 8" x 10½".
- Margins as shown.
- Double space text.
- Typed name and title.
- Ink signature.
- Two copies: legible and certified, or duplicate originals.



[41 FR 48520, Nov. 4, 1976]

80-176 O—82——28

APPENDIX B

AB No.	Name of Carrier
1	Chicago & North Western Transportation Co.
2	Louisville & Nashville RR. Co.
3	Missouri Pacific RR. Co.
4	Cadillac & Lake City Ry. (debtor).
5	Penn Central Transportation Co. (debtor).
6	Burlington Northern, Inc.
7	Chicago, Milwaukee, St. Paul & Pacific Ry. Co.
8	Denver & Rio Grande Western RR. Co.
9	St. Louis-San Francisco Ry. Co.
10	Norfolk & Western Ry. Co.
11	Chicago & Eastern Illinois RR.
12	Southern Pacific Transportation Co.
13	Holton Inter-Urban Ry. Co.
14	Northwestern Pacific RR. Co.
15	Petaluma & Santa Rosa RR. Co.
16	San Diego & Arizona Eastern Ry. Co.
17	Visalia Electric RR. Co.
18	The Chesapeake & Ohio Ry. Co.
19	The Baltimore & Ohio RR. Co.
20	The Texas & Pacific Ry. Co.
21	Abilene & Southern Ry. Co.
22	Texas-New Mexico Ry. Co.
23	Texas Pacific-Missouri Pacific Terminal RR. of New Orleans.
24	Fort Worth Belt Co.
25	The Weatherford Mineral Wells & Northwestern Ry. Co.
26	Southern Ry. Co.
27	The Alabama Great Southern RR. Co.
28	Central of Georgia RR. Co.
29	The Cincinnati, New Orleans & Texas Pacific RR. Co.
30	Georgia Southern & Florida Ry. Co.
31	Grand Trunk Western RR. Co.
32	Boston & Maine Corp. (debtor).
33	Union Pacific RR. Co.
34	St. Joseph & Grand Island RR. Co.
35	Los Angeles & Salt Lake RR. Co.
36	Oregon Short Line RR. Co.
37	Oregon-Washington Railroad & Navigation Co.
38	Pennsylvania & Atlantic RR. Co.
39	St. Louis Southwestern Ry. Co.
40	St. Louis Southwestern Ry. Co. of Texas.
41	Flint Hills Ry., Inc.
42	Aroostock Valley RR. Co.
43	Illinois Central Gulf RR. Co.
44	Lehigh Valley RR. Co. (debtor).
45	Albany Port District Commission.
46	Chicago, Rock Island & Pacific RR. Co.
47	Duluth Union Depot and Transfer Co.
48	Erie Lackawanna Ry. Co.
49	The Ann Arbor RR. Co.
50	Reading Co. (debtor).
51	Oregon Electric Ry. Co.
52	The Atchison, Topeka & Santa Fe Ry. Co.
53	The Kansas & Missouri Railway and Terminal Co.
54	Georgia RR.: The Western Ry. of Alabama; Atlanta & West Point RR. Co.; Milledgeville Ry. Co.; Georgia Railroad & Banking Co.
55	Seaboard Coast Line RR. Co.
56	The City of Maryville & The Maryville Housing Authority.
57	Soo Line RR. Co.
58	Reader RR.
59	Chattahoochee Valley Ry. Co.
60	Morehead & North Fork RR. Co.
61	Spokane, Portland & Seattle Ry. Co.
62	Marinette, Tomahawk & Western RR. Co.
63	Midway RR. Co.
64	Chattanooga Station Co.
65	St. Johnsbury & Lamoille County RR. Co.

APPENDIX B—Continued

AB No.	Name of Carrier
66	Minneapolis, Anoka & Cuyuna Range RR. Co.
67	West Pittston-Exeter RR. Co.
68	Lake Superior & Ishpeming RR. Co.
69	Western Maryland Ry. Co. and (The Baltimore and Cumberland Valley RR.)
70	Florida East Coast Ry. Co.
71	The Baltimore & Annapolis RR. Co.
72	Sacaramento Northern Ry.
73	Cincinnati Union Terminal Co.
74	Pennsylvania-Reading Seashore Lines.
75	Richmond Terminal Co.
76	Texas Central RR. Co.
77	Bangor & Aroostook RR. Co.
78	Fonda, Johnstown & Gloversville RR. Co.
79	Central RR. Co. of New Jersey.
80	Allentown Terminal RR. Co.
81	Norwood & St. Lawrence RR. Co.
82	The Marianna & Blountstown RR.
83	Maine Central RR. Co.
84	Illinois Terminal RR. Co.
85	The Union Terminal Co.
86	Cheswick & Marmar RR. Co.
87	Susquehanna Connecting RR. Co.
88	Bessemer & Lake Erie RR. Co.
89	Alameda Belt Line.
90	Caton & Loudon Ry. Co.
91	Central Illinois Light Co.
92	The Salt Lake City Union Depot & RR. Co.
93	Peoria Terminal Co.
94	El Paso Union Passenger Depot Co.
95	Hollis & Eastern RR. Co.
96	Bellefonte Central RR. Co.
97	The Texas Mexican Ry. Co.
98	Claremont & Concord Ry. Co.
99	Arkansas Western Ry. Co.
100	The General State Authority (Commonwealth of Pennsylvania).
101	Duluth, Missabe & Iron Range Ry. Co.
102	Missouri-Kansas-Texas RR. Co.
103	Kansas City Southern Ry. Co.
104	East Tennessee & Western North Carolina RR. Co.
105	Western Pacific RR. Co.
106	The Colorado & Wyoming Ry. Co.
107	Kalamazoo, Allegan & Grand Rapids RR. Co.
108	Texas Export RR. Co.
109	Quanah, Acme & Pacific Ry. Co.
110	Nezperce RR. Co.
111	Detroit, Toledo & Ironton RR. Co.
112	Great Plains Ry. Co.
113	Edgemoor & Manetta RR.
114	Clarendon & Pittsford RR. Co.
115	Lehigh & New England Ry. Co.
116	City of Hillsboro (for Oregon Electric Ry.).
117	Elgin, Joliet & Eastern Ry. Co.
118	Albany Passenger Terminal Co.
119	The Fort Worth & Denver Ry. Co.
120	Chicago & Western Indiana RR. Co.
121	Spokane International RR.
122	Terminal RR. Association of St. Louis.
123	Chicago Produce Terminal Co.
124	Waterloo RR. Co.
125	Norfolk Southern Ry. Co.
126	Wellsville, Addison & Galeton RR. Co.
127	Central Iowa Transportation Cooperative.
128	East Washington RR. Co.
129	Twin Branch RR. Co.
130	Cotton-Plant Fargo Ry. Co.
131	Yakima Valley Transportation Co.

[41 FR 48520, Nov. 4, 1976]

PART 1122—DISCONTINUANCE OR CHANGE OF OPERATION OR SERVICE

Sec.

1122.1 Scope of rules in this part.
1122.2 Definitions.
1122.3 Form and style of notice.
1122.4 Contents of notice.
1122.5 Information required with notice.
1122.6 Petition.
1122.7 Execution.
1122.8 Filing; copies.
1122.9 Notice of discontinuance filed pursuant to the Rail Passenger Service Act of 1970, section 401(a)(1).

AUTHORITY: Sec. 12, 24 Stat. 383, as amended, sec. 13a, 72 Stat. 571; 49 U.S.C. 12, 13a.

SOURCE: 32 FR 20110, Dec. 20, 1967, unless otherwise noted.

§ 1122.1 Scope of rules in this part.

The rules in this part govern the procedure to be followed by carriers subject to part I of the Interstate Commerce Act which, under and pursuant to the provisions of section 13a of said act, file with the Commission a notice under paragraph (1) of said section or a petition under paragraph (2) thereof with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

§ 1122.2 Definitions.

As used in this part:

(a) The term "act" means the Interstate Commerce Act, as amended.

(b) The term "notice" means a notice as provided for in paragraph (1) of section 13a.

(c) The term "petition" means a petition filed with the Commission under the provisions of paragraph (2) of section 13a for authority to effect a discontinuance or change.

§ 1122.3 Form and style of notice.

The notice shall be reproduced by printing, multigraphing, or mimeographing (or by any other process provided the copies are clearly legible) on paper not less than 8½ by 11 inches, with the words, "Notice of proposed change (or discontinuance, if appropriate) of service" printed in large boldface type near the top. If printed, nothing less than 12-point type shall be used in the remainder of the notice.

§ 1122.4 Contents of notice.

A separate notice shall be given for each discontinuance or change of service. A single notice may include more than one train or ferry except that unrelated trains or ferries shall not be made the subject of a single notice. Each notice shall set forth the following information:

(a) Exact corporate name and general office address of the carrier.

(b) The number and name or other description of the train or ferry with respect to which a discontinuance or change of operation or service is proposed, the name of each station, depot, or facility affected thereby, and the termini between which the train or ferry operates.

(c) The date on which the discontinuance or change of operation or service is proposed to become effective.

(d) Advice to the public that persons desiring to object to the proposed discontinuance or change should notify the Interstate Commerce Commission, at Washington, D.C., of such objection and the reasons therefor at least 15 days before the effective date of the proposed discontinuance or change.

§ 1122.5 Information required with notice.

With each notice of a proposed discontinuance or change of operation or service, there shall be filed with the Commission a "Statement in Relation to Proposed Discontinuance or Change of Train or Ferry Service" which, in the body thereof or in exhibits attached thereto and referred to therein, shall contain the following:

(a) Exact corporate name and general office address of the carrier proposing the discontinuance or change.

(b) Name, title, and post office address of counsel or officer to whom correspondence in regard to the notice should be addressed.

(c) Complete description of the present service of the train or ferry involved and of the discontinuance or change of operation or service proposed.

(d) Complete statement of the reasons for the proposed discontinuance or change of operation or service.

(e) The names of all railroads interchanging passengers or freight with the subject train or ferry, and the points of such interchange.

(f) Description of other common carrier service, including service of the subject carrier, of the same kind (passenger or freight) rendered by the trains or ferries involved, between and at the points described in the notice and other common carrier service available in the immediate territory.

(g) A statement of the traffic transported on trains or ferries involved for each of the last 2 calendar years and for the part of the current year for which such information is available. If information for such periods is not submitted, explanation must be given as to why such information was not submitted. When a notice involves more than one train or ferry, the traffic of each should be segregated to the extent practicable. If the proposed discontinuance or change involves less than all of the stations served by a train or ferry, to the extent such information is available segregation should be made of the traffic transported to and from each station which will be affected.

(h) Financial results of operating the trains or ferries involved during the period or periods embraced in the statement submitted pursuant to paragraph (g) of this section, segregated in the same manner and to the same extent as required by that paragraph.

(i) A copy of the carrier's general balance sheet statement as of the latest date available; and of its income statements for each of the last two calendar years and for that portion of the current year for which such information is available.

(j) A certificate that a copy of the notice and of the "Statement in Relation to Proposed Discontinuance or Change of Train or Ferry Service" has been mailed to the Governor and railroad regulatory body of each State in which the subject train or ferry is operated and that such notice has been posted in a conspicuous place in each station, depot, or other facility involved, including each ferry and each passenger car on trains affected, which certificate shall include information of the date or dates on which the notice and statement were mailed and the date or dates on which the notice was posted as aforesaid and that a copy of the notice and statement were served upon the Assistant Postmaster General, Bureau of Transportation and International Services, Washington, D.C. 20260 and the Railway Labor Executives' Association, Washington, D.C. 20001.

(k) Map showing the geographic situation of the line over which the train operates, or, if a ferry, the route traversed. The map should show the line or route clearly, by color or otherwise, and the stations thereon, on a sheet not smaller than 8½ x 11 inches. Three copies of the map should be submitted unbound for use of the Commission, in addition to those attached to the statement.

§ 1122.6 Petition.

Petitions for authority to effect a discontinuance or change of the operation or service of a train or ferry shall contain in the body thereof or in exhibits attached thereto and referred to therein, the information required by paragraph (b) of § 1122.4 of this part, that required by § 1122.5 excepting paragraph (j) thereof, and in addition the following:

(a) The date on which the petition or application for discontinuance or change in the operation or service of the train or ferry was filed with the appropriate State authority.

(b) Identification of the State authority with which such petition or application was filed.

(c) Description of the action, if any, taken by such State authority on the petition or application filed with it.

(d) To be filed only with the original of the petition to the Commission,

copy of the record made before the State authority, including copies of the application or petition to it, transcript of any oral hearing, and decision and order, if any.

§ 1122.7 Execution.

The original copy of the statement required by § 1122.5 and of a petition as described in § 1122.6 shall be signed in ink by an executive officer of the carrier having knowledge of the matters and things therein set forth. Persons signing the statement or petition shall also sign a certificate in form as follows:

———— (Name) hereby certifies that he is the ———— (Title) of the ———————— (Corporate name of petitioner) petitioner herein; that he has been authorized by proper corporate action on the part of said petitioner, or by the proper court, to execute and file with the Interstate Commerce Commission the foregoing statement (or petition); that he has carefully examined all of the statements referred to in said statement (or petition) and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

————————
(Signature)

Dated this —— day of ————, 19——

NOTE: A false statement is punishable by law.

§ 1122.8 Filing; copies.

As applicable, 8 copies of the notice and an original and 7 copies of the accompanying statement, or an original and 7 copies of the petition shall be filed with the Secretary of the Commission, Washington, D.C. Each copy of the statement or petition shall bear the dates and signatures that appear in the original and shall be complete in itself; but the signatures in the copies may be stamped or typed.

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942. Budget Bureau No. 60-R342.1.

§ 1122.9 Notice of discontinuance filed pursuant to the Rail Passenger Service Act of 1970, section 401(a)(1).

Any notice of intercity passenger train discontinuance filed by a common carrier by rail pursuant to section 401(a)(1) of the Rail Passenger Service Act of 1970 (45 U.S.C. 501 note), which, in part, provides that a railroad upon entering into a valid contract with the National Railroad Passenger Corp. shall be relieved of all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service, shall be submitted in accordance with the following:

(a) The form and style of notice shall be the same as that designated in § 1122.3 and shall include: (1) The information required in § 1124.4 (a), (b), and (c) of this chapter; (2) a statement advising the public that subject trains, are intercity and entitled to be discontinued by virtue of section 401(a)(1) of the Rail Passenger Service Act of 1970 (45 U.S.C. 501 note) and, therefore, the Interstate Commerce Commission cannot entertain protests since the discontinuance is not within its jurisdiction; and a statement advising that any filing of a notice of discontinuance under this section shall not, under any circumstances, invoke the Commission's jurisdiction under section 13a(1) of the Interstate Commerce Act;

(b) Three copies of said notice shall be filed with the Secretary of the Commission accompanied by three copies of an opinion of counsel that the said trains to be discontinued are intercity passenger trains subject to the said Rail Passenger Service Act of 1970 and not excepted therefrom by section 102(5) of the cited Act.

(c) Prior to the effective date of the discontinuance there shall be filed with the Commission three copies of a verified statement, executed by a responsible official of the carrier, that a valid contract has been entered into with the National Railroad Passenger Corp.

(d) The provisions of § 1122.5 et seq. and the fee for filing notice of discontinuance, as set forth in § 1002.2(d)(17) of this chapter shall not be applicable to notices filed under this section.

(e) Except for notices of discontinuance filed pursuant to section 401(a)(1) of the Rail Passenger Service Act of 1970, Public Law 91-518, all other regulations concerning train discontinuance proceedings shall remain in full force and effect.

[36 FR 5220, Mar. 18, 1971]

PART 1123—DETERMINATION OF AVOIDABLE LOSSES

Sec.
1123.1 Scope of rules in this part.
1123.2 Definitions.
1123.3 Information required with application.
1123.4 Required exhibits.
1123.5 Form and style.
1123.6 Procedure.

AUTHORITY: Secs. 102, 401, 84 Stat. 1327; secs. 1, 12, 17, 24 Stat. 379, 383, and 40 Stat. 270, all as amended; 49 U.S.C. 1, 12, and 17; 5 U.S.C. 553 and 559.

SOURCE: 38 FR 12744, May 15, 1973, unless otherwise noted.

§ 1123.1 Scope of rules in this part.

The rules in this part govern procedure to be followed by the National Railroad Passenger Corp. and a railroad subject to part I of the Interstate Commerce Act, when an impasse is reached between the two relative to the final settlement price to be paid by the railroad in consideration of being relieved of all of its responsibility as a common carrier of passengers by rail in intercity rail passenger service pursuant to the Rail Passenger Service Act of 1970. Either the National Railroad Passenger Corp. or the railroad shall apply to the Commission for a determination of the avoidable loss with respect to the subject intercity rail passenger service. The burden of proof of avoidable loss shall rest with the railroads, and the procedure provided hereinafter shall be followed.

§ 1123.2 Definitions.

(a) Avoidable costs are those operating expenses, rents, and taxes listed in the Uniform System of Accounts (title 49 CFR 1200-1201) which can be demonstrated to have been required for the provision of intercity rail passenger service in 1969, which would not have been incurred had such service not been performed.

(b) Avoidable loss is the excess of avoidable costs of providing intercity rail passenger service over the nonretainable revenues from the same service, pursuant to section 102(6) of the Rail Passenger Service Act of 1970.

(c) Nonretainable revenues are the railroad's 1969 revenues attributable to its intercity rail passenger service, which it would not have received had such service not been performed.

(d) Solely related expenses are the operating expenses, rents, and taxes which are incurred only for providing a specific service.

(e) Common expenses are those operating expenses, rents, and taxes which are not solely related to one service but are required to provide more than one service.

(f) In determining whether a service is commuter or other short-haul service in metropolitan and suburban areas, within the meaning of section 102(3)(A) of the Rail Passenger Service Act of 1970, the Commission will consider the following features, among others:

(1) The passenger service is primarily being used by patrons traveling on a regular basis, either within a metropolitan area or between a metropolitan area and its suburb;

(2) The service is usually characterized by operations performed at morning and evening peak periods of travel;

(3) The service usually honors commutation or multiple ride ticket at a fare reduced below the ordinary coach fare and carries the majority of its patrons on such a reduced fare basis;

(4) The service makes several stops at short intervals either within a zone or along the entire route;

(5) The equipment used may consist of little more than ordinary coaches;

(6) The service should not extend more than 100 miles at the most, except in rare instances; although service over shorter distances may not be commuter or short haul within the meaning of the said act of 1970.

(g) Intercity passenger service is all passenger services other than (1) commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare,

multiple-ride and commutation tickets, and by morning and evening peak period operations, and (2) auto-ferry service characterized by transportation of automobiles and their occupants where contracts for such service have been consummated prior to enactment of the Rail Passenger Service Act of 1970.

§ 1123.3 Information required with application.

Application required under § 1123.1 shall include the following information set forth in the sequence indicated:

(a) Identification of the applicant showing:

(1) Full and correct name of the applicant and the business address of applicant (street and number, city, county, and State).

(2) The name, title, and business address of the officer or officers to whom correspondence with respect to the application should be addressed.

(b) Information respecting the terms and conditions of the contract pursuant to which the proposed transfer of intercity rail passenger service is to be effected, including the manner and terms of payment of the consideration.

(c) Information respecting the route, termini, and mileage of the lines to be transferred.

(d) Statements, in summary form, showing the applicant's calculation, for loss of all intercity rail passenger the calendar year 1969, of the avoidable service and/or that portion of such service that was operated over routes between points on the basic system, supported by the exhibits required by § 1123.4 and presented as follows:

(1) Solely related intercity passenger-train costs.

(2) Common expenses apportioned to intercity passenger service.

(3) Avoidable intercity passenger costs.

(4) Nonretainable revenues.

(5) Added expenses of hauling carrier personnel, material, and company mail.

(6) Avoidable loss.

§ 1123.4 Required exhibits.

There shall be filed with the original application and as a part thereof, the following exhibits:

(a) As exhibit (A) a statement of the fully distributed passenger service deficit of the railroad as reported to the Commission for the year ending December 31, 1969. This statement shall be supplied in the same format provided in Schedule 300, Income Account for the Year as prescribed in Rail Annual Report Form A.

(b) As exhibit (B) a statement showing total and avoidable operating expenses, rents, and taxes by primary account for (1) all intercity rail passenger service and/or (2) that portion of such service that was operated over routes between points on the basic system, presented in the format attached hereto and identified as appendix B.

(c) As exhibit (C) a statement setting forth the method used and the justification, for each primary account, of the avoidable expenses reported in exhibit (B) as described above. Avoidable intercity expenses shall be supported by identification of specific positions, equipment, facilities, and materials which would not be required upon discontinuance of the intercity passenger service.

(d) As exhibit (D) a statement of revenues earned in 1969 as a result of providing intercity passenger service which could not have been retained by the railroad after the discontinuance of such service. This statement shall exclude revenues which could have been retained even though intercity rail passenger service were discontinued. If the 200-percent formula is being relied on, data required in this exhibit should be furnished for that portion of the service that was performed over routes between the points on the basic system. This data shall be supplied in the same format provided in Schedule 310, Railway Operating Revenues, as prescribed in Rail Annual Report Form A.

(e) As exhibit (E) a statement supporting determination of nonretainable revenues submitted as exhibit D.

(f) As exhibit (F) a listing, by position classification, of the number of

positions involved exclusively or in part in intercity passenger service during the month of December 1969. These positions shall be listed and identified in the same format as prescribed for ICC Wage Statistics, forms A and B. In addition, positions involved exclusively in intercity passenger service shall be separated from positions involved in part in intercity passenger service. The account to which wages are charged and the average annual wage shall also be shown for each position. In addition, for each position involved only in part in intercity passenger service an estimate (stated as a percent) of the portion of time assigned to intercity passenger service shall be provided. If the 200-percent formula is being relied on, a similar showing should be furnished giving the above information as to that portion of such service that was performed over routes between points on the basic system.

(g) As exhibit G—an estimate of what the added expenses would have been for hauling carrier personnel, material, and company mail if no passenger service had been provided during 1969.

§ 1123.5 Form and style.

The application and exhibits shall conform with rule 15 of the general rules of practice (§ 1100.15 of this chapter).

§ 1123.6 Procedure.

(a) There shall be filed with the Secretary of the Commission, Washington, D.C., the original application, and 15 copies thereof for the use of the Commission. The original application shall be signed in ink by the applicant, if an individual, by all partners, if a copartnership, and if a corporation, association, or other similar form of organization, by its president, vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein contained and duly designated for that purpose by the applicant, and shall be made under oath. The application shall show that the affiant is duly authorized by the applicant to verify and file the same. Each copy shall conform in all respects to the original and shall be complete in itself except that the signature in the copies may be stamped or typed and notarial seal omitted.

PART 1125—STANDARDS FOR DETERMINING RAIL SERVICES CONTINUATION SUBSIDIES

Sec.

1125.1 Purpose of the standards.
1125.2 Definitions of terms used in the standards.
1125.3 Procedure for calculating a subsidy estimate.
1125.4 Interim payments, financial reports, and interpretations.
1125.5 Year-end adjustment.
1125.6 Revenue and income attributable to branch lines.
1125.7 Calculation of avoidable costs and management fee.
1125.8 Apportionment rules for the assignment of expenses to on-branch costs.
1125.9 Return on value of rail properties.

APPENDIX I—FORMAT FOR PRESENTATION OF SUBSIDY ESTIMATE

APPENDIX II—FORMAT FOR FINANCIAL STATUS REPORTS

AUTHORITY: Section 205(d)(6), Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat 985, 994, as amended by sec. 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57.

SOURCE: 43 FR 1692, Jan. 11, 1978, unless otherwise noted.

§ 1125.1 Purpose of the standards.

(a) The 3R Act established a method of preserving rail service that would otherwise be discontinued as a result of the restructuring process developed by the final system plan. Section 304(c)(2) of the 3R Act, as amended, provides that no rail service or properties may be discontinued or abandoned if a financially responsible person or government entity offers a subsidy which: (1) Covers the difference between the carrier's revenues attributable to such rail properties and the carrier's avoidable costs of providing rail service on such properties, together with a reasonable management fee, and (2) includes a reasonable return on the value of such properties. Further, the person offering the subsidy shall designate the operator of the continued rail service.

(b) RSPO was directed to develop and publish standards to determine "revenues attributable to the rail properties," the "avoidable costs of providing service," a "reasonable return on the value," and a "reasonable management fee" as those phrases are used in section 304 of the 3R Act as amended. These standards (49 CFR 1125), developed by RSPO and referred to as the "Regional Subsidy Standards," are applicable only for subsidized freight operations over those rail properties of the railroads in reorganization which were not conveyed to ConRail. (Methods governing the calculation of subsidies for rail properties of other railroads as well as those properties conveyed to ConRail are covered by a separate set of standards (49 CFR 1121) and are referred to as the "National Subsidy Standards.")

(c) These standards intend that parties to a subsidy agreement utilize arms-length negotiation to the fullest extent possible in establishing and executing a subsidy operating agreement. The standards presented here develop the methodologies for: (1) Calculating a subsidy estimate to be used as a basis for a subsidy offer under section 304(c)(2) of the 3R Act, as amended, (2) determining the actual revenues and costs of a subsidized operation during the subsidy year, and (3) establishing a return on the value of the properties used in continuing the rail service. Parties may agree in arms-length negotiations to provisions which modify these standards, subject to review of such modifications by RSPO. RSPO would not expect to disapprove variations from the standards which are the product of arms-length negotiations and which are shown to be reasonable in the light of pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with RSPO for its review.

(d) In brief, the standards describe the method for establishing a subsidy estimate, the basis for paying this estimate during the subsidy year, the method of calculating the actual subsidy during the subsidy period, and the provisions for adjusting for the difference between the estimated subsidy and the actual subsidy at the end of the subsidy period.

(e) For further information regarding these standards, persons may contact RSPO's Cost Evaluation Branch at 202-254-7552.

§ 1125.2 Definitions of terms used in the standards.

Unless otherwise required by the context, the following definitions apply:

"Account" means an account in the ICC's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

"3R Act" means the Regional Rail Reorganization Act of 1973, Pub. L. 93-236 (87 Stat. 985).

"4R Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

"Base year" means, for initial subsidy estimates, the year employed by the U.S. Railway Association in developing the final system plan (1973). For subsequent subsidy estimates, the base year is the year immediately preceding the year for which the subsidy estimate is being calculated.

"Branch" means a segment of a railroad that is not designated to be in the final system plan under the 3R Act, and that is the subject of a notice in writing of intent to discontinue service under section 304(a) of the 3R Act.

"Form R-1" means a class I railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

"Form R-2" means a class II railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

"FRA" means the Federal Railroad Administration, U.S. Department of Transportation.

"GMA" means General Managers Association of Chicago.

"ICC" means the Interstate Commerce Commission.

"Just and Reasonable Charge" means that a charge to an account shall not exceed an amount necessary to the honest and efficient operation and management of carrier business.

"Notice of intent" means a notice in writing of intent to discontinue service under section 304(a) of the 3R Act and notice of intent to abandon rail properties under section 304(b) of the 3R Act.

"Person offering a subsidy" means a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offering a rail service continuation subsidy under section 304(c)(2)(A) of the 3R Act.

"Rail Form A" means the ICC's formula for use in determining rail freight service costs, statement 1F1-73.

"Railroad" means a railroad company, or the trustee or trustees of a railroad company, that gives a notice in writing of intent to discontinue service under section 304(a) of the 3R act, and, as the context requires, "railroad" may mean either the owner of rail properties over which subsidized service is or may be performed, or the operator of that service, or both.

"RSPO" means the Rail Services Planning Office established by section 205 of the 3R Act.

"Subsidy year" means any 12-month period for which a subsidy agreement is negotiated and in operation.

"XX," when used in place of digits in a six-digit account number, means that all accounts containing the remaining four digits are to be used in the procedure being described. Example: "11-21-XX" refers to all salary and wage accounts for locomotives because "11" designates salaries and wages and "21" designates locomotives. Thus, "11-21-XX" includes all of the following accounts: 11-21-01, 11-21-40, 11-21-48, 11-21-39, and 11-21-99. Similarly, "XX-31-67" means all accounts containing "31" (train operations) and "67" (locomotive fuel).

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 19560, Mar. 26, 1980]

§ 1125.3 Procedure for calculating a subsidy estimate.

(a) *Discontinuance notice and subsidy offer procedures*—(1) *Notice of discontinuance.* A railroad giving notice of intent to discontinue service on a branch shall provide an "Estimate of Subsidy Payment" and shall distribute copies of this estimate to the Director of RSPO, the Governor and railroad regulatory commission of each State within which the branch is located, and any other person upon request. The format of the "Estimate of Subsidy Payment" is prescribed in appendix I. The subsidy estimate shall be the difference between the revenues attributable to the rail properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, plus a reasonable return on the value of the properties. Beginning with the week in which it gives notice of intent to discontinue service on the branch, pursuant to section 304(a)(1)(B) of the 3R Act, the railroad shall publish a copy of that notice of intent in a newspaper or newspapers of general circulation in the area encompassing the branch at least once a week for three consecutive weeks. Each railroad shall include in the required notices a statement of the address of the railroad's office within the State or States where interested persons may examine, during regular working hours, the materials and information upon which the subsidy estimate calculations were made. If the railroad so requests, examination of documents which disclose information concerning the nature, kind, quantity, destination, consignee, or routing of traffic may be restricted to the representative of the person offering a subsidy and then only if that representative agrees to keep that information confidential. A notice of intent to discontinue service, according to section 304(a)(1)(B) of the 3R Act, is not considered complete or given until the railroad has fulfilled these requirements.

(2) *Subsidy offer.* Persons wishing to subsidize rail service proposed for discontinuance shall: (i) Communicate in writing with the railroad selected as the designated operator for the continuation of such service, offering to pay such operator the estimated subsidy amount, and (ii) communicate in writing with the trustee(s) or owner(s) of the railroad which owns the branch line, offering to pay a reasonable return on the value of the properties. Upon the offer of a subsidy from a financially responsible person, discon-

tinuance of the rail service or abandonment of the rail properties for which the subsidy is being offered is prohibited, pursuant to section 304(c)(2)(A) of the 3R Act. The parties are free to negotiate operating levels and reasonable variations from the standards, but when impasse occurs in the negotiations, the standards established here can be invoked.

Because USRA was not required to utilize the standards promulgated by RSPO as criteria for inclusion of branch lines in the final system plan, it is possible that a branch line could be excluded from the final system plan and yet generate revenues which exceed the costs as calculated under these standards. Therefore, RSPO has established the amount that a potential subsidizer must offer under section 304(c)(2)(A) as the amount computed by the subsidy estimate formula or $1.00, whichever is the greater.

(3) *Use of prior subsidy standards.* Even though these standards become effective January 1, 1978, parties to existing subsidy agreements may agree to continue to use the standards in effect prior to January 1, 1978, for the remainder of the current subsidy year.

(4) *Basis of estimated subsidy.* The estimated subsidy for the subsidy year immediately following conveyance in the reorganization process (ConRail start-up date) shall be calculated according to an interim formula based on data from 1973, which was the base year employed by USRA in developing the final system plan. This interim formula, using 1973 data, is to be employed only for the calculation of initial subsidy agreements; once a subsidy agreement is in place, subsequent years' estimates shall be based on data drawn from the preceding subsidy year. Estimates for revenues, on-branch avoidable costs, off-branch costs, a reasonable management fee, and a return on value shall be calculated according to the procedures in §§ 1125.3(b) through 1125.3(f) inclusive. The subsidy estimate procedure relies in many instances on the same formulas that are used to calculate the actual subsidy amount; the basic difference between the estimated and actual subsidy calculations is that the actual subsidy amount is calculated using data reflecting the experience of the subsidy year, while the estimate is based on anticipated operational results.

(b) *Estimated revenues.* Using base year data, estimated revenues shall include all sources of revenue and income prescribed as revenues and income attributable to the rail properties in the calculation of the actual subsidy, see § 1125.6.

(c) *Estimated on-branch costs.* On-branch cost estimates shall be separated and calculated as follows:

(1) *Routine maintenance of way and structures.* These expenses shall be estimated at $1,000 per year per mile of track on the branch for which the railroad is responsible for maintenance, unless the parties agree to a higher level.

(2) *Rehabilitation.* Rehabilitation costs shall not be included unless: (i) The track involved does not meet minimum FRA class I safety standards (49 CFR Part 213), in which case, the railroad shall furnish a detailed estimate of the costs to rehabilitate the track to FRA class I level with the notice of intent and provision to cover such costs shall be included in the subsidy agreements; or (ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation and makes such a request within 10 days after the date of notice of intent is filed, in which case the railroad shall furnish an estimate of the costs involved within 20 days after the date of that request. All such requests and estimates shall refer to specific projects for rehabilitation.

(3) *Maintenance of equipment excluding freight cars.* Estimates for maintenance of equipment shall be developed by applying base year data to the formula for calculating the actual maintenance of equipment expense, see § 1125.7(b). Unless the parties agree to a different base, the resulting average unit costs shall be applied to the branch base year service units to arrive at the estimate.

(4) *Transportation.* Transportation costs shall be estimated based on system average costs. The number of trips per year shall be based on the frequency of service performed at the time the notice is filed unless the par-

ties agree to a different level. Labor costs for train crews shall be based on system average costs for each type of crew applied to the hours of service on the branch. The crew costs shall be classified into three major categories: Yard, local/way, and through. The straight time average costs per hour for each yard, local/way, or through train crew member shall be calculated for class I railroads by using the railroad's Employees, Service, and Compensation Report (Form B) for the base year. The calculation is made by adding together the straight time compensation and the constructive allowances, and dividing this total by the straight time hours acutually worked. This process would be repeated for each yard, local/way, and through train class of employee. For class II railroads, the straight time average cost per hour for each yard, local/way, or through train crew member shall be calculated in the same manner, using the railroad's payroll records for the base year. After the hourly rate is determined for each member, the cost per crew hour shall be calculated based on the exact size and consist of the crew currently serving the branch. The crew cost per hour is multiplied by the estimated hours that will be incurred in serving the branch during the subsidy period. The estimated direct crew costs must be increased to cover fringe benefits using the procedure specified in § 1125.7(c). The railroad shall also furnish estimates of costs for the remaining transportation accounts using § 1125.7(c) as a guide to their inclusion and basis of calculation.

(5) *General administrative expenses.* In exceptional circumstances, the railroad may be allowed to include general administrative expenses. Such expenses are allowable only if the size of the railroad's operation (measured in total mileage, gross revenues, gross ton-miles, or car-miles) is increased by more than 25 percent as a result of operating the subsidized service, or the individual line being operated under a subsidy agreement generates $10 million or more in gross revenues per annum. If the railroad foresees this increase, then estimates may be calculated for the accounts included under general administrative costs in § 1125.7(d).

(6) *Deadheading, taxi, and hotel costs.* Estimates for these costs shall be determined from base year data reflecting deadheading, taxi, and hotel costs incurred as a result of providing service to the branch line. The amounts under this section shall not be included under the wage accounts for yard conductors and brakemen, yard enginemen, or trainmen.

(7) *Overhead movement costs.* Estimates for these costs shall be determined from base year data reflecting overhead movement costs incurred as a result of providing service to the branch. The amounts shown shall be limited to transportation, equipment, and freight cars. The amounts shown under this section shall not be included under other sections of these standards.

(8) *Freight Car Costs.* Freight cars costs shall be estimated by a method consistent with the detailed procedures specified in § 1125.7(g).

(9) *Taxes.* Estimates for property taxes shall be based on the base year actual tax assessment, adjusted for tax rate changes; revenue taxes shall be based on the estimated revenue level.

(10) *Administrative Fee.* The estimated administrative fee shall be one percent of the revenues estimated under § 1125.3(b).

(11) *Casualty Reserve Account.* Estimates for this item shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability. Such cost may include a reasonable fee to cover the cost of administering the fund.

(12) *Termination Costs.* Estimates for these costs shall be determined according to a projection of costs reasonably and necessarily incurred should service to the subsidized branch be terminated. These costs shall not include any costs which the railroad would have incurred had the branch not been operated under the subsidy program. The 15 percent ceiling discussed in § 1125.5 is not applicable to these costs unless they are included in the estimated subsidy amount.

(d) *Estimated Off-Branch Costs.* A ratio of off-branch costs to revenues for the base year shall be used to derive the estimate of off-branch costs for the subsidy year. Base year off-branch costs shall be calculated using the procedure established in § 1125.7(n). If data identifying actual carloads by car type are not available, car type shall be based upon the railroad's best estimate. The resulting ratio of base year off-branch costs to revenues shall then be applied to the revenues estimated under § 1125.3(b) to develop the estimated off-branch costs for the subsidy year.

(e) *Estimated Management Fee.* The estimated management fee shall be four and one-half percent of the revenues estimated under § 1125.3(b). If the railroad and the person offering the subsidy agree to an additional fee designed as an incentive to maximize revenues, minimize expenses, promote efficient service, or otherwise achieve public interest objectives, the railroad shall be paid such fee as determined in accordance with an agreement to that effect.

(f) *Estimated Return on Value.* The railroad shall appraise the value of the property using the procedures described in § 1125.9(a). If the value is challenged, an appraisal of the property by a qualified and certified appraiser(s) shall be offered by the potential subsidizer. If the parties cannot agree on a valuation through negotiation, an average of the two appraisals shall be used as the estimated valuation. The rate of return to be applied to the value of the properties shall be determined in accordance with § 1125.9(b).

§ 1125.4 Interim payments, financial reports, and interpretations.

(a) *Interim Subsidy Payments.* The person offering a subsidy shall offer to pay, in return for the continuation of rail service, an amount computed on the basis of the interim formula described in § 1125.3. The interim payment may be adjusted, by agreement of the parties, to take into account factors, such as rate increases and changes in traffic levels, which would make the sole use of base year data an inappropriate means of estimating the payment for the subsidy year or to conform to amendments to these standards made subsequent to the original agreement. Interest shall be applied to any deferred payment, calculated at the same rate as the rate of return on value specified in § 1125.9(b), for the period of time such payment is outstanding. The amount estimated for the management fee and for the difference between the revenues attributable and the avoidable costs shall be paid to the railroad operating the branch line. The amount estimated for the return on value shall be paid directly to the trustee(s) or owner(s) of the property, unless the parties agree that such payment shall be made by the railroad in behalf of the subsidizer.

(b) *Financial Status Reports.* The railroad must establish a system for collecting costs and other required data at the branch level, and must, within thirty days after the end of each quarter of the subsidy year, file with the person offering the subsidy a "Financial Status Report" which shall include the information prescribed in the method for calculating the actual subsidy as specified in §§ 1125.6, 1125.7, and 1125.9. The format of the "Financial Status Report" is prescribed in Appendix II. Significant deviations from the original estimates must be explained. In all reports, the actual data reflecting the year to date shall show a projection to the end of the subsidy year for each item, except that off-branch costs shall be estimated during the subsidy year by applying the ratio developed in accordance with § 1125.3(d) to the revenues.

Unless the parties agree otherwise, the last Financial Status Report filed during the first ten months of the subsidy year shall be the basis for developing the estimated subsidy payment for the subsequent year's agreement. The Financial Status Reports should be considered detailed progress reports monitoring the actual costs and revenues involved for operating rail service on the branch throughout the subsidy year; the Financial Status Reports are not to be considered as "progress billings" for subsidy services performed.

(c) *Interpretations of the Standards.* Parties desiring an interpretation of the standards should file a written petition with RSPO citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner shall identify those parties and serve each of them with a copy of the petition. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. RSPO will issue an interpretation, unless it concludes that the matter raised requires amendment of the standards, in which case RSPO will institute a rulemaking proceeding. The address of RSPO is:

Rail Services Planning Office, 1900 L Street NW., Washington, D.C. 20036.

§ 1125.5 Year-end adjustment.

(a) On the basis of the railroad's year-end Final Status Report and the net impact of inflation developed in §§ 1125.7 (n)(5) and 1125.8 (e), the subsidy payment shall be adjusted to reconcile any differences between the subsidy payments actually made based on the estimated subsidy and the actual subsidy calculated from data reflecting the actual revenues and costs experienced in the operation of the branch during the subsidy year.

(b) Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated subsidy shall be treated as a carryover advoidable cost in the subsequent subsidy year. This provision shall apply unless: (1) The railroad notifies the subsidizer in one of the Financial Status Reports issued during the first ten months of the subsidy year that the estimate will be exceeded by more than 15 percent, or (2) The increase results from an expense approved in advance by the person offering the subsidy.

(c) Should the year-end adjustment reflect an overpayment by the person offering the subsidy, the amount of overpayment shall be reimbursed by the railroad.

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 27447, Apr. 23, 1980]

§ 1125.6 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101-Freight.* The revenues assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad, derived from waybills and other source documents, for all traffic that:

(1) Originates or terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier.

All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental: Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debit; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Conversion Chart for Revenue Accounts.*

Revenue account title	Previous account number	Present account number
Freight	101, 109	101
Switching	110	104
Water transfers	113	105
Demurrage	137	106
Incidental	130, 132, 133, 135, 138, 139, 141, 142, 143.	110
Joint facility—credit	151	121
Joint facility—debit	152	122
Revenues from property used in other than carrier operations less expenses.	502, 511	506, 534
Miscellaneous rent income	510	510
Miscellaneous income	519	519

[43 FR 1692, Jan. 11, 1978; 43 FR 8530, Mar. 2, 1978]

§ 1125.7 Calculation of avoidable costs and management fee.

(a) This section defines: (1) Which cost elements are eligible for inclusion in the calculation of avoidable costs; (2) the conditions under which certain cost elements become eligible for inclusion; and (3) the basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis.

(b) The avoidable costs of providing freight service on a branch shall be the total of the just and reasonable charges assigned to the branch in accordance with this section. Those expenses apportioned under this section shall be derived from the latest Form R-1 or R-2 or R-3 of the railroad filed with the ICC prior to the conclusion of the subsidy year, and assigned to the branch according to the procedures set forth in § 1125.8 of these regulations.

(c) When the term "actual" is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch.

(d) The accounts in the following charts, which list only the "freight-only" account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
(a) Maintenance of Way and Structures			
(1) Administration:			
Track			
Salaries and Wages	201	11-13-02	Actual.
Materials		21-13-02	Do.
Purchased Services		41-13-02	Do.
Other Expenses		61-13-02	Do.
Bridges and Buildings			
Salaries and Wages	201	11-13-03	Do.
Materials		21-13-03	Do.
Purchased Services		41-13-03	Do.
Other Expenses		61-13-03	Do.
Signals			
Salaries and Wages	201	11-13-04	Do.
Materials		21-13-04	Do.
Purchased Services		41-13-04	Do.
Other Expenses		61-13-04	Do.
Communications			
Salaries and Wages	201	11-13-05	Do.
Materials		21-13-05	Do.
Purchased Services		41-13-05	Do.
Other Expenses		61-13-05	Do.
Other			
Salaries and Wages	201	11-13-06	Do.
Materials		21-13-06	Do.
Purchased Services		41-13-06	Do.
Other Expenses		61-13-06	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
(2) Repair maintenance and other:			
Roadway—Running			
Salaries and Wages	202	11-11-10	Actual.
Materials		21-11-10	Do.
Repairs by Others—DR		39-11-10	Do.
Repairs for Others—CR		40-11-10	Do.
Purchased Services		41-11-10	Do.
Other Expenses		61-11-10	Do.
Roadway—Switching			
Salaries and Wages	202	11-12-10	Do.
Materials		21-12-10	Do.
Repairs by Others—DR		39-12-10	Do.
Repairs for Others—CR		40-12-10	Do.
Purchased Services		41-12-10	Do.
Other Expenses		61-12-10	Do.
Tunnels and Subways—Running			
Salaries and Wages	206	11-11-11	Do.
Materials		21-11-11	Do.
Repairs by Others—DR		39-11-11	Do.
Repairs for Others—CR		40-11-11	Do.
Purchased Services		41-11-11	Do.
Other Expenses		61-11-11	Do.
Tunnels and Subways—Switching			
Salaries and Wages	206	11-12-11	Do.
Materials		21-12-11	Do.
Repairs by Others—DR		39-12-11	Do.
Repairs for Others—CR		40-12-11	Do.
Purchased Services		41-12-11	Do.
Other Expenses		61-12-11	Do.
Bridges and Culverts—Running			
Salaries and Wages	208-210	11-11-12	Do.
Materials		21-11-12	Do.
Repairs by Others—DR		39-11-12	Do.
Repairs for Others—CR		40-11-12	Do.
Purchased Services		41-11-12	Do.
Other Expenses		61-11-12	Do.
Bridges and Culverts—Switching			
Salaries and Wages	208-210	11-12-12	Do.
Materials		21-12-12	Do.
Repairs by Others—DR		39-12-12	Do.
Repairs for Others—CR		40-12-12	Do.
Purchased Services		41-12-12	Do.
Other Expenses		61-12-12	Do.
Ties—Running—Material	212	21-11-13	Do.
Ties—Switching—Material	212	21-12-13	Do.
Rails—Running—Material	214	21-11-14	Do.
Rails—Switching—Material	214	21-12-14	Do.
Other Track Material—Running—Material	216	21-11-15	Do.
Other Track Material—Switching—Material	216	21-12-15	Do.
Ballast—Running—Material	218	21-11-16	Do.
Ballast—Switching—Material	218	21-12-16	Do.
Track Laying and Surfacing—Running			
Salaries and Wages	220	11-11-17	Do.
Materials		21-11-17	Do.
Repairs by Others—DR		39-11-17	Do.
Repairs for Others—CR		40-11-17	Do.
Purchased Services		41-11-17	Do.
Other Expenses		61-11-17	Do.
Track Laying and Surfacing—Switching			
Salaries and Wages	220	11-12-17	Do.
Materials		21-12-17	Do.
Repairs by Others—DR		39-12-17	Do.
Repairs for Others—CR		40-12-17	Do.
Purchased Services		41-12-17	Do.
Other Expenses		61-12-17	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Road Property Damaged—Running			
Salaries and Wages	202-220, and 249	11-11-48	Actual.
Materials		21-11-48	Do.
Repairs by Others—DR		39-11-48	Do.
Repairs for Others—CR		40-11-48	Do.
Purchased Services		41-11-48	Do.
Other Expenses		61-11-48	Do.
Road Property Damaged—Switching			
Salaries and Wages	202-220, and 249	11-12-48	Do.
Materials		21-12-48	Do.
Repairs by Others—DR		39-12-48	Do.
Repairs for Others—CR		40-12-48	Do.
Purchased Services		41-12-48	Do.
Other Expenses		61-12-48	Do.
Road Property Damaged—Other			
Salaries and Wages	221, 227-247 253, 257 265, 269	11-13-48	Do.
Materials		21-13-48	Do.
Repairs by Others—DR		39-13-48	Do.
Repairs for Others—CR		40-13-48	Do.
Purchased Services		41-13-48	Do.
Other Expenses		61-13-48	Do.
Signals and Interlockers—Running			
Salaries and Wages	249	11-11-19	Do.
Materials		21-11-19	Do.
Repairs by Others—DR		39-11-19	Do.
Repairs for Others—CR		40-11-19	Do.
Purchased Services		41-11-19	Do.
Other Expenses		61-11-19	Do.
Signals and Interlockers—Switching			
Salaries and Wages	249	11-12-19	Do.
Materials		21-12-19	Do.
Repairs by Others—DR		39-12-19	Do.
Repairs for Others—CR		40-12-19	Do.
Purchased Services		41-12-19	Do.
Other Expenses		61-12-19	Do.
Communications Systems			
Salaries and Wages	247	11-13-20	Do.
Materials		21-13-20	Do.
Repairs by Others—DR		39-13-20	Do.
Repairs for Others—CR		40-13-20	Do.
Purchased Services		41-13-20	Do.
Other Expenses		61-13-20	Do.
Electric Power Systems			
Salaries and Wages	253, 257, and 304	11-13-21	Do.
Materials		21-13-21	Do.
Repairs by Others—DR		39-13-21	Do.
Repairs for Others—CR		40-13-21	Do.
Purchased Services		41-13-21	Do.
Other Expenses		61-13-21	Do.
Highway Grade Crossings—Running			
Salaries and Wages	273	11-11-22	Do.
Materials		21-11-22	Do.
Repairs by Others—DR		39-11-22	Do.
Repairs for Others—CR		40-11-22	Do.
Purchased Services		41-11-22	Do.
Other Expenses		61-11-22	Do.
Highway Grade Crossings—Switching			
Salaries and Wages	273	11-12-22	Do.
Materials		21-12-22	Do.
Repairs by Others—DR		39-12-22	Do.
Repairs for Other—CR		40-12-22	Do.
Purchased Services		41-12-22	Do.
Other Expenses		61-12-22	Do.

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Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Station and Office Buildings			
Salaries and Wages	227	11-13-23	Actual.
Materials		21-13-23	Do.
Repairs by Others—DR		39-13-23	Do.
Repairs for Others—CR		40-13-23	Do.
Purchased Services		41-13-23	Do.
Other Expenses		61-13-23	Do.
Station Buildings—Locomotives			
Salaries and Wages	235, 253, and 257	11-13-24	Do.
Materials		21-13-24	Do.
Repairs by Others—DR		39-13-24	Do.
Repairs for Others—CR		40-13-24	Do.
Purchased Services		41-13-24	Do.
Other Expenses		61-13-24	Do.
Shop Buildings—Freight Cars			
Salaries and Wages	235, 253, and 257	11-13-25	Do.
Materials		21-13-25	Do.
Repairs by Others—DR		39-13-25	Do.
Repairs for Others—CR		40-13-25	Do.
Purchased Services		41-13-25	Do.
Other Expenses		61-13-25	Do.
Shop Buildings—Other Equipment			
Salaries and Wages	235, 253, and 257	11-13-26	Do.
Materials		21-13-26	Do.
Repairs by Others—DR		39-13-26	Do.
Repairs for Others—CR		40-13-26	Actual.
Purchased Services		41-13-26	Do.
Other Expenses		61-13-26	Do.
Locomotive Servicing Facilities			
Salaries and Wages	231, 233	11-13-27	Do.
Materials		21-13-27	Do.
Repairs by Otherrs—DR		39-13-27	Do.
Repairs for Others—CR		40-13-27	Do.
Purchased Services		41-13-27	Do.
Other Expenses		61-13-27	Do.
Miscellaneous Buildings and Structures			
Salaries and Wages	221, 229, 239, 265, and 304	11-13-28	Do.
Materials		21-13-28	Do.
Repairs by Others—DR		39-13-28	Do.
Repairs for Others—CR		40-13-28	Do.
Purchased Services		41-13-28	Do.
Other Expenses		61-13-28	Do.
Coal Terminals			
Salaries and Wages	243	11-13-29	Do.
Materials		21-13-29	Do.
Repairs by Others—DR		39-13-29	Do.
Repairs for Others—CR		40-13-29	Do.
Purchased Services		41-13-29	Do.
Other Expenses		61-13-29	Do.
Ore Terminals			
Salaries and Wages	243	11-13-30	Do.
Materials		21-13-30	Do.
Repairs by Others—DR		39-13-30	Do.
Repairs for Others—CR		40-13-30	Do.
Purchased Services		41-13-30	Do.
Other Expenses		61-13-30	Do.
TOFC/COFC Terminals			
Salaries and Wages	244	11-13-31	Do.
Materials		21-13-31	Do.
Repairs by Others—DR		39-13-31	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
TOFC/COFC Terminals—Continued			
Repairs for Others—CR		40-13-31	Actual.
Purchased Services		41-13-31	Do.
Other Expenses		61-13-31	Do.
Other Marine Terminals			
Salaries and Wages	241	11-13-32	Do.
Materials		21-13-32	Do.
Repairs by Others—DR		39-13-32	Do.
Repairs for Others—CR		40-13-32	Do.
Purchased Services		41-13-32	Do.
Other Expenses		61-13-32	Do.
Motor Vehicle Loading and Distribution Facilities			
Salaries and Wages	227	11-13-33	Do.
Materials		21-13-33	Do.
Repairs by Others—DR		39-13-33	Do.
Repairs for Others—CR		40-13-33	Do.
Purchased Services		41-13-33	Do.
Other Expenses		61-13-33	Do.
Facilities for Other Specialized Service Operations			
Salaries and Wages	227, 237	11-13-35	Do.
Materials		21-13-35	Do.
Repairs by Others—DR		39-13-35	Do.
Repairs for Others—CR		40-13-35	Do.
Purchased Services		41-13-35	Do.
Other Expenses		61-13-35	Do.
Roadway Machines			
Salaries and Wages	269	11-13-36	Daily repair costs per GMA, for each type of machine used on the branch line, § 1125.8(a)(1).
Materials		21-13-36	
Repairs by Others—DR		39-13-36	
Repairs for Others—CR		40-13-36	
Purchased Services		41-13-36	
Other Expenses		61-13-36	
Small Tools and Supplies			
Salaries and Wages	271	11-13-37	Assign supplies on the daily costs per GMA, for each type of machine used on the branch; small tools assign to maintenance of way 11-11/12-10 through 17, and 48, § 1125.8(a)(2).
Materials		21-13-37	
Repairs by Others—DR		39-13-37	
Repairs for Others—CR		40-13-37	
Purchased Services		41-13-37	
Other Expenses		61-13-37	
Snow Removal			
Salaries and Wages	272	11-13-38	Actual.
Materials		21-13-38	Do.
Repairs by Others—DR		39-13-38	Do.
Repairs for Others—CR		40-13-38	Do.
Purchased Services		41-13-38	Do.
Other Expenses		61-13-38	Do.
Fringe Benefits—Running	277, 457	12-11-00	11-11-XX, § 1125.8(a)(3)(i)
Fringe Benefits—Switching	277, 457	12-12-00	11-11-XX, § 1125.8(a)(3)(ii)
Fringe Benefits—Other	277, 457	12-13-00	11-11-XX, § 1125.8(a)(3)(iii)
Casualties and Insurance—Running			
Other Casualties	274	52-11-00	Actual.
Insurance	275	53-11-00	Do.
Casualties and Insurance—Switching			
Other Casualties	274, and 420	52-13-00	Do.
Insurance	275	53-13-00	Do.
Lease Rentals—Debit—Running	542	31-11-00	Do.
Lease Rentals—Debit—Switching	542	31-12-00	Do.
Lease Rentals—Debit—Other	542	31-13-00	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Casualties and Insurance—Switching—Continued			
Lease Rentals—Credit—Running	509	32-11-00	Actual.
Lease Rentals—Credit—Switching	509	32-12-00	Do.
Lease Rentals—Credit—Other	509	32-13-00	Do.
Joint Facility Rents—Debit—Running	541	33-11-00	Do.
Joint Facility Rents—Debit—Switching	541	33-12-00	Do.
Joint Facility—Debit—Other	541	33-13-00	Do.
Joint Facility Rent—Credit—Running	508	34-11-00	Do.
Joint Facility Rent—Credit—Switching	508	34-12-00	Do.
Joint Facility Rent—Credit—Other	508	34-13-00	Do.
Other Rents—Debit—Running	543	35-11-00	Do.
Other Rents—Debit—Switching	543	35-12-00	Do.
Other Rents—Debit—Other	543	35-13-00	Do.
Other Rents—Credit—Running	510	36-11-00	Do.
Other Rents—Credit—Switching	510	36-12-00	Do.
Other Rents—Credit—Other	510	36-13-00	Do.
Depreciation—Running	266	62-11-00	Do.
Depreciation—Switching	266	62-12-00	Do.
Depreciation—Other	266, 306	62-13-00	Do.
Joint Facility—Debit—Running	278	37-11-00	Do.
Joint Facility—Debit—Switching	278	37-12-00	Do.
Joint Facility—Debit—Other	278	37-13-00	Do.
Joint Facility—Credit—Running	279	38-11-00	Do.
Joint Facility—Credit—Switching	279	38-12-00	Do.
Joint Facility—Credit—Other	279	38-13-00	Do.
Dismantling Retired Road Property—Running			
Salaries and Wages	270	11-11-39	Do.
Materials		21-11-39	Do.
Purchased Services		41-11-39	Do.
Other Expenses		61-11-39	Do.
Dismantling Retired Road Property—Switching			
Salaries and Wages	270	11-12-39	Do.
Materials		21-12-39	Do.
Purchased Services		41-12-39	Do.
Other Expenses		61-12-39	Do.
Dismantling Retired Road Property—Other			
Salaries and Wages	270	11-13-39	Do.
Materials		21-13-39	Do.
Purchased Services		41-13-39	Do.
Other Expenses		61-13-39	Do.
Other—Running			
Salaries and Wages	281-282, 274	11-11-99	Do.
Materials		21-11-99	Do.
Purchased Services		41-11-99	Do.
Other Expenses		61-11-99	Do.
Other—Switching			
Salaries and Wages	281-282, 274	11-12-99	Do.
Materials		21-12-99	Do.
Purchased Services		41-12-99	Do.
Other Expenses		61-12-99	Do.
Other—Other			
Salaries and Wages	281-282	11-13-99	Do.
Materials		21-13-99	Do.
Purchased Services		41-13-99	Do.
Other Expenses		61-13-99	Do.
(b) Maintenance of Equipment			
(1) Locomotives:			
Administration			
Salaries and Wages	301	11-21-01	Do.
Materials		21-21-01	Do.
Purchased Services		41-21-01	Do.
Other Expenses		61-21-01	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Repairs and Maintenance			
Salaries and Wages	311	11-21-41	Road diesel and Road Electric locomotive gross ton miles. Yard Diesel and Yard Electric locomotive unit hours, § 1125.8(b)(1).
Materials		21-21-41	
Repairs by Others—DR		39-21-41	
Repairs for Others—CR		40-21-41	
Purchased Services		41-21-41	
Other Expenses		61-21-41	
Machinery Repair			
Salaries and Wages	302	11-21-40	Actual.
Materials		21-21-40	Do.
Repairs by Others—DR		39-21-40	Do.
Repairs for Others—CR		40-21-40	Do.
Purchased Services		41-21-40	Do.
Other Expenses		61-21-40	Do.
Equipment Damaged			
Salaries and Wages	311	11-21-48	Do.
Materials		21-21-48	Do.
Repairs by Others—DR		39-21-48	Do.
Repairs for Others—CR		40-21-48	Do.
Purchased Services		41-21-48	Do.
Other Expenses		61-21-48	Do.
Fringe Benefits	335,457	12-21-00	11-21-xx, § 1125.8(b)(3)(i).
Other Casualties and Insurance			
Other Casualties	332	52-21-00	Actual.
Insurance	333	53-21-00	Do.
Lease Rentals—Debit	537	31-21-00	Do.
Lease Rentals—Credit	504	32-21-00	Do.
Joint Facility Rent—Debit	541	33-21-00	Do.
Joint Facility Rent—Credit	508	34-21-00	Do.
Other Rents—Debit	537	35-21-00	Do.
Other Rents—Credit	504	36-21-00	Do.
Joint Facility—Debit	336	37-21-00	Do.
Joint Facility—Credit	337	38-21-00	Do.
Depreciation	331, 305	62-21-00	All locomotives, locomotive unit hours, § 1125.8(b)(2).
Dismantling Retired Property			
Salaries and Wages	306, 329	11-21-39	Actual.
Materials		21-21-39	Do.
Purchased Services		41-21-39	Do.
Other Expenses		61-21-39	Do.
Other			
Salaries and Wages	339, 332	11-21-99	Do.
Materials	339	21-21-99	Do.
Purchased Services	339	41-21-99	Do.
Other Expenses	339, 332	61-21-99	Do.
(2) Freight Cars:			
Administration			
Salaries and Wages	301	11-22-01	Do.
Materials		21-22-01	Do.
Purchased Services		41-22-01	Do.
Other Expenses		61-22-01	Do.
Machinery Repair			
Salaries and Wages	302	11-22-40	Do.
Materials		21-22-40	Do.
Repairs by Others—DR		39-22-40	Do.
Repairs for Others—CR		40-22-40	Do.
Purchased Services		41-22-40	Do.
Other Expenses		61-22-40	Do.
Equipment Damage			
Salaries and Wages	314	11-22-48	Do.
Materials		21-22-48	Do.
Repairs by Others—DR		39-22-48	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Equipment Damage—Continued			
Repairs for Others—CR		40-22-48	Actual.
Purchased Services		41-22-48	Do.
Other Expenses		61-22-48	Do.
Fringe Benefits	335, 457	12-22-00	11-22-XX, § 1125.8(b)(3)(iii).
Other Casualties and Insurance			
Other Casualties	332	52-22-00	Actual.
Insurance	333	53-22-00	Do.
Joint Facility Rent—DR	541	33-22-00	Do.
Joint Facility Rent—CR	508	34-22-00	Do.
Joint Facility—DR	336	37-22-00	Do.
Joint Facility—CR	337	38-22-00	Do.
Dismantling Retired Property			
Salaries and Wages	306, 329	11-22-39	Do.
Materials		21-22-39	Do.
Purchased Services		41-22-39	Do.
Other Expenses		61-22-39	Do.
Other			
Salaries and Wages	330, 339, and 332	11-22-99	Do.
Materials		21-22-99	Do.
Purchased Services		41-22-99	Do.
Other Expenses		61-22-99	Do.
Freight Car Costs Per Day and Per Mile			
Repair and Maintenance			
Salaries and Wages	314	11-22-42	These accounts are used to develop the cost per car day and per car mile for each type of car. § 1125.7(g).
Materials		21-22-42	
Repairs by Others—DR		39-22-42	
Repairs for Others—CR		40-22-42	
Purchased Services		41-22-42	
Other Expenses		61-22-42	
Lease Rentals—DR	536	31-22-00	
Lease Rentals—CR	503	32-22-00	
Depreciation	331, 305	62-22-00	
Other Rents—DR	536	35-22-00	
Other Rents—CR	503	36-22-00	
(3) Other Equipment:			
Administration			
Salaries and Wages	301	11-23-01	Actual.
Materials		21-23-01	Do.
Purchased Services		41-23-01	Do.
Other Expenses		61-23-01	Do.
Repair and Maintenance			
Trucks, Trailers and Containers—Revenue Service			
Salaries and Wages	318	11-23-43	Do.
Materials		21-23-43	Do.
Repairs by Others—DR		39-23-43	Do.
Repairs for Others—CR		40-23-43	Do.
Purchased Services		41-23-43	Do.
Other Expenses		61-23-43	Do.
Floating Equipment—Revenue Service			
Salaries and Wages	323	11-23-44	Do.
Materials		21-23-44	Do.
Repairs by Others—DR		39-23-44	Do.
Repairs for Others—CR		40-23-44	Do.
Purchased Services		41-23-44	Do.
Other Expenses		61-23-44	Do.
Computer and Data Processing			
Salaries and Wages	(1)	11-23-46	Do.
Materials		21-23-46	Do.
Repairs by Others—DR		39-23-46	Do.
Repairs for Others—CR		40-23-46	Do.
Purchased Services		41-23-46	Do.
Other Expenses		61-23-46	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Machinery			
Salaries and Wages	302	11-23-40	Actual.
Materials		21-23-40	Do.
Repairs by Others—DR		39-23-40	Do.
Repairs for Others—CR		40-23-40	Do.
Purchased Services		41-23-40	Do.
Other Expenses		61-23-40	Do.
Work and Other Nonrevenue Equipment			
Salaries and Wages	326,328	11-23-47	Do.
Materials		21-23-47	Do.
Repairs by Others—DR		39-23-47	Do.
Repairs for Others—CR		40-23-47	Do.
Purchased Services		41-23-47	Do.
Other Expenses		61-23-47	Do.
Equipment Damaged			
Salaries and Wages	318, 323, 326, and 328	11-23-48	Do.
Materials		21-23-48	Do.
Repairs by Others—DR		39-23-48	Do.
Repairs for Others—CR		40-23-48	Do.
Purchased Services		41-23-48	Do.
Other Expenses		61-23-48	Do.
Fringe Benefits	335, 457	12-23-00	11-23-XX, § 1125.8(b)(3)(ii).
Other Casualties and Insurance			
Other Casualties	332	52-23-00	Do.
Insurance	333	53-23-00	Actual.
Lease Rentals—DR	539, 540	31-23-00	Do.
Lease Rentals—CR	506, 507	32-23-00	Do.
Joint Facility Rent—DR	541	33-23-00	Do.
Joint Facility Rent—CR	508	34-23-00	Do.
Other Rents—DR	539, 540	35-23-00	Do.
Other Rents—CR	506, 507	36-23-00	Do.
Depreciation	331, 305	62-23-00	Do.
Joint Facility—DR	336	37-23-00	Do.
Joint Facility—CR	337	38-23-00	Do.
Dismantling Retired Property			
Salaries and Wages	306, 329	11-23-39	Do.
Materials		21-23-39	Do.
Purchased Services		41-23-39	Do.
Other Expenses		61-23-39	Do.
Other			
Salaries and Wages	339, 332	11-23-99	Do.
Materials	339	21-23-99	Do.
Purchased Services	339	41-23-99	Do.
Other Expenses	339, 332	61-23-99	Do.
(c) Transportation			
(1) Train Operations:			
Administration			
Salaries and Wages	371	11-31-01	Do.
Materials		21-31-01	Do.
Purchased Services		41-31-01	Do.
Other Expenses		61-31-01	Do.
Engine Crews			
Salaries and Wages	392	11-31-56	Do.
Materials	402	21-31-56	Train Hours, § 1125.8(c)(1)(i).
Purchased Services	402	41-31-56	Actual.
Other Expenses	402	61-31-56	Do.
Train Crews			
Salaries and Wages	401	11-31-57	Do.
Materials	402	21-31-57	Trains Hours, § 1125.8(c)(1)(i).
Purchased Services	402	41-31-57	Actual.
Other Expenses	402	61-37-57	Do.
Dispatching Trains			
Salaries and Wages	372	11-31-58	Do.
Materials		21-31-58	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Dispatching Trains—Continued			
Purchased Services		41-31-58	Actual.
Other Expenses		61-31-58	Do.
Operating Signals and Interlockers			
Salaries and Wages	404	11-31-59	Do.
Materials		21-31-59	Do.
Purchased Services		41-31-59	Do.
Other Expenses		61-31-59	Do.
Operating Drawbridges			
Salaries and Wages	406	11-31-60	Do.
Materials		21-31-60	Do.
Purchased Services		41-31-60	Do.
Other Expenses		61-31-60	Do.
Highway Crossing Protection			
Salaries and Wages	405	11-31-61	Do.
Materials		21-31-61	Do.
Purchased Services		41-31-61	Do.
Other Expenses		61-31-61	Do.
Train and Inspection and Lubrication			
Salaries and Wages	314,402, and 311	11-31-62	Train Hours, § 1125.8(c)(1)(i).
Materials		21-31-62	Train Hours, § 1125.8(c)(1)(i).
Purchased Services		41-31-62	Actual.
Other Expenses		61-31-62	Do.
Locomotive Fuel			
Salaries and Wages	394	11-31-67	Diesel locomotive unit hours, § 1125.8(c)(1)(ii).
Materials		21-31-67	
Purchased Services		41-31-67	
Other Expenses		61-31-67	
Electric Power Purchased or Produced for Motive Power			
Salaries and Wages	395, 445	11-31-68	Electric Locomotive unit hours, § 1125.8(c)(1)(iii).
Materials	395, 445	21-31-68	
Purchased Services	395, 396, 445	41-31-68	
Other Expenses	395, 445	61-31-68	
Servicing Locomotives			
Salaries and Wages	400	11-31-69	Locomotive unit miles, § 1125.8(c)(1)(iv).
Materials		21-31-69	
Purchased Services		41-31-69	
Other Expenses		61-31-69	
Freight Lost or Damaged—Solely Related	418, 419	51-31-00	Actual.
Clearing Wrecks			
Salaries and Wages	415	11-31-63	Do.
Materials		21-31-63	Do.
Purchased Services		41-31-63	Do.
Other Expenses		61-31-63	Do.
Fringe Benefits	409, 457	12-31-00	11-31-XX, § 1125.8(c)(4)(i).
Other Casualties and Insurance			
Other Casualties	416, 417, 420	52-31-00	Actual.
Insurance	414	53-31-00	Do.
Joint Facility—DR	412	37-31-00	Do.
Joint Facility—CR	413	38-31-00	Do.
Other			
Salaries and Wages	402, 411, and 420	11-31-99	Do.
Materials		21-31-99	Do.
Purchased Services		41-31-99	Do.
Other Expenses		61-31-99	Do.
(2) Yard Operations:			
Administration			
Salaries and Wages	371	11-32-01	Do.
Materials		21-32-01	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Purchased Services		41-32-01	Actual.
Other Expenses		61-32-01	Do.
Switch Crews			
Salaries and Wages	378, 380	11-32-64	Do.
Materials	389	21-32-64	Locomotive unit hours, § 1125.8(c)(2)(i).
Purchased Services	389	41-32-64	Actual.
Other Expenses	389	61-32-64	Do.
Controlling Operations			
Salaries and Wages	377	11-32-65	Do.
Materials	389	21-32-65	Do.
Purchased Services	389	41-32-65	Do.
Other Expenses	389	61-32-65	Do.
Yard and Terminal Clerical			
Salaries and Wages	377	11-32-66	Do.
Materials	389	21-32-66	Do.
Purchased Services	389	41-32-66	Do.
Other Expenses	389	61-32-66	Do.
Operating Switches, Signals, Retarders and Humps			
Salaries and Wages	379	11-32-59	Do.
Materials	389	21-32-59	Do.
Purchased Services	389	41-32-59	Do.
Other Expenses	389	61-32-59	Do.
Locomotive Fuel			
Salaries and Wages	382	11-32-67	Diesel locomotive unit hours, § 1125.8(c)(2)(ii).
Materials		21-32-67	
Purchased Services		41-32-67	
Other Expenses		61-32-67	
Electric Power Purchased or Produced for Motive Power			
Salaries and Wages	383, 445	11-32-68	Electric locomotive unit hours, § 1125.8(c)(2)(iii).
Materials	383, 445	21-32-68	
Purchased Services	383, 384, 445	41-32-68	
Other Expenses	383, 445	61-32-68	
Servicing Locomotives			
Salaries and Wages	388	11-32-69	Locomotive unit hours, § 1125.8(c)(2)(i).
Materials		21-32-69	
Purchased Services		41-32-69	
Other Expenses		61-32-69	
Freight Lost or Damaged—Solely Related	418, 419	51-32-00	Actual.
Clearing Wrecks			
Salaries and Wages	415	11-32-63	Actual.
Materials		21-32-63	Do.
Purchased Services		41-32-63	Do.
Other Expenses		61-32-63	Do.
Fringe Benefits	409, 457	12-32-00	11-32-XX, § 1125.8(c)(4)(ii).
Other Casualties and Insurance			
Other Casualties	416, 420	52-32-00	Actual.
Insurance	414	53-32-00	Do.
Joint Facility—DR	390, 412	37-32-00	Do.
Joint Facility—CR	391, 413	38-32-00	Do.
Other			
Salaries and Wages	411, 420	11-32-99	Do.
Materials		21-32-99	Do.
Purchased Services		41-32-99	Do.
Other Expenses		61-32-99	Do.
(3) Train and Yard Operations Common:			
Cleaning Car Interiors			
Salaries and Wages	402	11-33-70	Do.
Materials		21-33-70	Do.
Purchased Services		41-33-70	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Adjusting and Transferring Loads			
Salaries and Wages	373, 402	11-33-71	Actual.
Materials	376, 402	21-33-71	Do.
Purchased Services	376, 402	41-33-71	Do.
Carloading Devices and Grain Doors			
Salaries and Wages	402	11-33-72	Do.
Materials		21-33-72	Do.
Purchased Services		41-33-72	Do.
Freight Lost or Damaged—All Other	418, 419	51-33-00	Do.
Fringe Benefits	409	12-33-00	11-33-XX, § 1125.8(c)(4)(iii).
(4) Specialized Service Operations:			
Administration			
Salaries and Wages	371, 408, 443	21-34-01	Do.
Materials		21-34-01	Do.
Purchased Services		41-34-01	Do.
Other Expenses		61-34-01	Do.
Pick-up and Delivery, Marine Line Haul, and Rail Substitute Service			
Salaries and Wages	408, 421, 422	11-34-73	Do.
Materials		21-34-73	Do.
Purchased Services		41-34-73	Do.
Other Expenses		61-34-73	Do.
Loading and Unloading and Local Marine			
Salaries and Wages	375, 408, 421	11-34-74	Do.
Materials	422 and 443	21-34-74	Do.
Purchased Services		41-34-74	Do.
Other Expenses		61-34-74	Do.
Protective Services			
Salaries and Wages	402, 421, 422 and 443	11-34-75	Do.
Materials		21-34-75	Do.
Purchased Services		41-34-75	Do.
Other Expenses		61-34-75	Do.
Freight Lost or Damaged—Solely Related			
Fringe Benefits	409, 457, and 449	12-34-00	11-34-XX, § 1125.8(c)(4)(iv).
Casualties and Insurance			
Other Casualties	416, 420	52-34-00	Actual.
Insurance	414	53-34-00	Do.
Joint Facility—DR	412, 447	37-34-00	Do.
Joint Facility—CR	413, 448	38-34-00	Do.
Other			
Salaries and Wages	411, 442, 446, and 420	11-34-99	Do.
Materials		21-34-99	Do.
Purchased Services		41-34-99	Do.
Other Expenses		61-34-99	Do.
(5) Administrative Support Operations:			
Administration			
Salaries and Wages	371	11-35-01	Do.
Materials		21-35-01	Do.
Purchased Services		41-35-01	Do.
Other Expenses		61-35-01	Do.
Employees Performing Clerical and Accounting Functions			
Salaries and Wages	373	11-35-76	Do.
Materials	376	21-35-76	Do.
Purchased Services	376	41-35-76	Do.
Other Expenses	376	61-35-76	Do.
Communication Systems Operation			
Salaries and Wages	373, 407	11-35-77	Do.
Materials	376, 407	21-35-77	Do.
Purchased Services	376, 407	41-35-77	Do.
Other Expenses	376, 407	61-35-77	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Loss and Damage Claims Processing			
Salaries and Wages	418, 419	11-35-78	Number of Claims, § 1125.8(c)(3)(i).
Materials		21-35-78	
Purchased Services		41-35-78	
Other Expenses		61-35-78	
Fringe Benefits	409, 457	12-35-00	11-35-XX, § 1125.8(c)(4)(v).
Joint Facility—DR	412, 447	37-35-00	Actual.
Joint Facility—CR	413, 448	38-35-00	Do.
Casualties and Insurance			
Other Casualties	416, 420	52-35-00	Do.
Insurance	414	53-35-00	Do.
Other			
Salaries and Wages	411, 420	11-35-99	Do.
Materials	411	21-35-99	Do.
Purchased Services	411	41-35-99	Do.
Other Expenses	411, 420	61-35-99	Do.
(d) General Administrative			
Officers—General Administration			
Salaries and Wages	351, 451	11-61-01	Do.
Materials		21-61-01	Do.
Purchased Services		41-61-01	Do.
Other Expenses		61-61-01	Do.
Accounting, Auditing and Finance			
Salaries and Wages	452	11-61-86	Do.
Materials		21-61-86	Do.
Purchased Services		41-61-86	Do.
Other Expenses		61-61-86	Do.
Management Services and Data Processing			
Salaries and Wages	452	11-61-87	Do.
Materials		21-61-87	Do.
Purchased Services		41-61-87	Do.
Other Expenses		61-61-87	Do.
Marketing			
Salaries and Wages	352	11-61-88	Do.
Materials		21-61-88	Do.
Purchased Services		41-61-88	Do.
Other Expenses		61-61-88	Do.
Sales			
Salaries and Wages	352	11-61-89	Do.
Materials		21-61-89	Do.
Purchased Services		41-61-89	Do.
Other Expenses		61-61-89	Do.
Industrial Development			
Salaries and Wages	356, 452, and 451	11-61-90	Do.
Materials		21-61-90	Do.
Purchased Services		41-61-90	Do.
Other Expenses		61-61-90	Do.
Personnel and Labor Relations			
Salaries and Wages	452 and 451	11-61-91	Do.
Materials		21-61-91	Do.
Purchased Services		41-61-91	Do.
Other Expenses		61-61-92	Do.
Legal and Secretarial			
Salaries and Wages	452, 454, 274, 332, and 420	11-61-92	Do.
Materials		21-61-92	Do.
Purchased Services		41-61-92	Do.
Other Expenses		61-61-92	Do.
Public Relations and Advertising			
Salaries and Wages	353, 354	11-61-93	Do.
Materials		21-61-93	Do.

Operating expense group and accounts	Previous account number	Present account Number	Basis of assignment to on-branch costs
Public Relations and Advertising—Continued			
Purchased Services		41-61-93	Actual.
Other Expenses		61-61-93	Do.
Research and Development			
Salaries and Wages	(1)	11-61-94	Do.
Materials		21-61-94	Do.
Purchased Services		41-61-94	Do.
Other Expenses		61-61-94	Do.
Fringe Benefits	359,456, 457	12-61-00	11-61-XX., § 1125.8(d)(1).
Casualties and Insurance			
Other Casualties	(2)	52-61-00	Actual.
Insurance	357, 455	53-61-00	Do.
Writedown of Uncollectible Accounts	706, 707	63-61-00	Do.
Other Taxes Except on Corporate Income or Payroll	532	65-61-00	Do.
Joint Facility—DR	461	37-61-00	Do.
Joint Facility—CR	462	38-61-00	Do.
Other			
Salaries and Wages	355, 360, 460, 351, 451, 452, and 453	11-61-99	Do.
Materials		21-61-99	Do.
Purchased Services		41-61-99	Do.
Other Expenses		61-61-99	Do.

[1] Various accounts.
[2] None.

(e) *Deadheading, Taxi, and Hotel Costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead Movement Costs.* The costs assigned under this subsection shall be the actual costs incurred in moving overhead in order to provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight Car Costs.* For Class I railroads, the on-branch costs for time-mileage freight cars shall be calculated on the basis of the railroad's average costs per day and per mile. The costs per day and per mile shall be calculated separately for each type of car specified in Ex Parte 334 (Car Service Compensation—Basic Per Diem Charges—Formula Revision In Accordance with the Railroad Revitalization and Regulatory Reform Act of 1976). These costs shall include: *Account 11-22-42—Salaries and wages—freight cars—repairs and maintenance; Account 21-22-42—Materials—freight cars—repairs and maintenance; Account 39-22-42—Repairs billed by others (Debit)—freight cars—repairs and maintenance; Account 40-22-42—Repairs billed to others (Credit)—freight cars—repairs and maintenance; Account 41-22-42—Other purchased services—freight cars—repairs and maintenance; Account 61-22-42—Other expenses—freight cars—repairs and maintenance; Account 31-22-00—Lease rentals (Debit) freight cars; Account 32-22-00—Lease Rentals (Credit)—freight cars; Account 35-22-00—Other rents (Debit)—freight cars; Account 36-22-00—Other rents (Credit—freight cars; and Account 62-22-00—Depreciation—freight cars;* and the return on investment in freight cars. The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time related costs and mileage related costs on the basis of the present Rail Form A apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Return on investment shall be treated as a 100 percent time-related cost. The system total receipts and payments for the hire of time mileage cars and the

basic data used in the development of the car-day and car-mile factors shall be taken from the railroad's latest Form R-1 and company records. The specific steps to complete the calculations are as follows:

(1) The total system car days by car type shall be calculated by averaging the railroad's freight car ownership at the beginning and ending of the year (R-1, schedule 710, columns (b) and (k)), multiplying the average by the standard active number of car days (346) as developed in ICC Docket Number 31358; subtracting car days on foreign lines (source: company records) and adding the foreign car days on home line (source: company records). This procedure shall be completed for each car type specified in Ex Parte 334.

(2) The total railroad car miles shall be calculated by adding the loaded car miles for railroad owned and leased cars (Form OSA, column (d), items 5-010 through 5-027), to the empty car miles for railroad owned and leased cars (Form OSA, column (d), items 5-110 through 5-127). The total car miles, loaded and empty shall be calculated for each car type specified in Ex Parte 334.

(3) The cost per car-day shall be calculated for each type of time-mileage car by adding 50 percent of the total freight car repair costs for each car type (R-1, schedule 415, column (b)); 60 percent of the depreciation costs for each car type (R-1, schedule 415, column (c)); 100 percent of return on investment, which is calculated by obtaining the net depreciated investment for each car type and multiplying it by the cost of capital ratio developed for use in Form 2 of the unrevised Rail Form A of the railroad; the time portion of the railroad's payments for hire of time-mileage freight cars (R-1, schedule 366, columns (h) and (i)); subtracting the time portion of the railroad's receipts for hire of time-mileage freight cars (R-1, schedule 366, columns (d) and (e)); and dividing the result by the total car days for each car type developed in paragraph (1).

(4) The cost per mile shall be calculated for each type of time-mileage car by adding 50 percent of the total freight train car repair cost for each car type (R-1, schedule 415, column (b)); 40 percent of the total depreciation costs for each car type (R-1, schedule 415, column (c)); the mileage portion of the railroad's payments for the hire of time-mileage freight cars (R-1, schedule 366, column (g)); subtracting the mileage portion of the railroad's receipts for hire of time-mileage of freight cars (R-1, schedule 366, column (c)); and dividing the result by the total car miles for each car type developed in paragraph (2).

(5) The costs per car-day and per car-mile developed in paragraphs (3) and (4) of this section shall be applied to the total car-days and total car miles for each car type accumulated on the branch for all traffic originated and/or terminated on the branch and all bridge traffic handled by the branch during the subsidy period which are attributed to time-mileage freight-train cars. The car-day and car-mile factors shall be furnished by the railroads.

(6) The on-branch costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (R-1, schedule 366, column (f)), for each car type; divided by the total miles on which the charges were based.

(7) For Class II railroads, the on-branch costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those States that subject the railroad to a revenue tax.

(i) *Property taxes.* (1) The amount of property taxes shall be the amount levied against the property on the branch, in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property, such as track, land, buildings, and other facilities.

(2) In States where property taxes are assessed on the basis of a formula of a statewide valuation of property and the branch or branches are included in the valuation of the railroad operating the service, the tax on each

branch shall be based on the distribution of the assessment by the State to that branch and the application of the appropriate tax rate or rates.

(3) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a statewide valuation of property, the tax on rolling stock attributable to each branch shall be determined as follows:

(i) Find the percent which the cost of equipment as used in the formula is to the total of all property cost as used in the formula;

(ii) Apply that percentage to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each branch on the basis of car and locomotive unit miles on the branch to total car and locomotive unit miles in the State;

(iv) Apply appropriate tax rate or rates to the allocated assessment thus determined.

(j) *Administrative Fee.* A carrier shall be entitled to receive an administrative fee only if the carrier is not entitled to include General Administrative Expenses, § 1125.7(d), as an avoidable cost. The administrative fee shall be calculated as one percent of the total revenues attributed to the branch under § 1125.6 and shall be allowed as an avoidable cost to the railroad to cover all costs of administering the subsidy program.

(k) *Deferred Subsidy Payment.* If the subsidy estimate or adjustment is paid in deferred payments, the railroad shall be compensated for the use of its working capital by applying the interest rate established in § 1125.9(b) to the deferred payment for the period of time such payment is outstanding.

(l) *Casualty Reserve Account.* The costs assigned under this account shall be any payment mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record any costs incurred by the railroad as a result of personal injury or property damage.

(m) *Termination Costs.* The costs assigned under this subsection shall be the actual costs reasonably and necessarily incurred as a result of terminating service to the subsidized branch. These costs shall not include any costs which the railroad would have incurred had the branch not been operated under the subsidy program. The 15 percent ceiling contained in § 1125.5 is not applicable to those costs unless such costs were included in the estimated subsidy payment.

(n) *Off-Branch Costs.* Until the ICC revises the Rail Form A cost procedure to facilitate the incorporation of the new USOA as well as review and if necessary change the theories contained within the present formula the procedure for determining the off-branch costs will use the existing Rail Form A formula applied to the latest Annual Report, Form R-1, that has been filed by the railroad using the prior unrevised accounting system. The development of the off-branch costs shall be as follows:

(1) Terminal costs, line-haul car costs, and interchange costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying variable unit costs to the service units attributed to the branch traffic during the subsidy period.

(2) The following through-train, single-line, variable unit costs shall be developed by a Class I railroad by applying Rail Form A to data contained in its latest Form R-1 filed with the Commission:

(i) Normal Rail Form A carload terminal cost per carload by car type.

(ii) Modified Rail Form A carload terminal cost per carload by car type (i.e., (*a*) substitute an intertrain switching cost separated between mileage and other than mileage cars, in place of a roadtrain to industry switching cost; (*b*) substitute modified car ownership costs per car-day for two days developed in accordance with § 1125.7(g), above, for the standard Rail Form A car ownership cost).

(iii) Rail Form A per hundredweight terminal cost.

(iv) Rail Form A cost per car-mile by car type.

(v) Rail Form A cost per ton-mile.

(vi) Rail Form A cost per car interchanged, separated between mileage and other than mileage cars.

These costs shall be applied by Class I railroads in accordance with the procedure set forth below in § 1125.7(n)(3).

(3) Calculations by car type: (i) The sum of all terminal costs incurred off the branch line shall be calculated by multiplying the modified terminal cost per carload by car type, paragraph (n)(2)(ii) above, by the total number of carloads originated or terminated on the branch line during the subsidy year. To this amount add the normal terminal cost per carload by car type, paragraph (n)(2)(i) above, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(ii) The sum of the hundredweight terminal costs incurred off the branch line shall be calculated by multiplying the hundredweight of freight originated or terminated on the branch that are local to the railroad serving the branch.

(iii) The sum of the line-haul car-mile costs incurred off the branch line shall be calculated by multiplying the car-mile cost by car type, paragraph (n)(2)(iv) above, by the loaded car-miles generated off the branch line by cars originated or terminated on the branch during the subsidy year. Where overhead movements to and from the branch have been included in the on-branch cost calculation under other sections of § 1125.7, the related loaded car-miles shall be excluded from this calculation.

(iv) The sum of the line-haul ton-mile costs shall be determined by multiplying the ton-mile cost, paragraph (n)(2)(v) above, by the total ton-miles of revenue freight incurred by the railroad on its lines, other than the branch lines, for revenue freight originated or terminated on the branch during the subsidy year.

(v) The interchange cost shall be calculated by multiplying the cost per car interchanged, paragraph (n)(2)(vi) above, by the number of carloads of traffic interchanged at a point off the branch line and originated or terminated on the branch.

(4) Class II and Class III line-haul railroads shall calculate off-branch costs as follows (based on: the carrier's latest Form R-2 or R-3 filed with the ICC; the ICC's latest *Rail Carload Cost Scales;* and the carrier's own records):

(i) A carrier that has only freight operations shall calculate the estimated system variable expenses by multiplying the total operating expenses by .78, the three-year composite variability ratio for all Class I railroads. If a carrier has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses [freight related operating expenses divided by total railway operating expenses].

(ii) The total number of revenue carload terminal handlings shall be determined from company records [originating and terminating (local) revenue carloads multiplied by 2, plus originating or terminating and interchange (interline) revenue carloads].

(iii) The total number of revenue carload interchange handlings shall be determined from company records [bridge (interchange to interchange) revenue carloads multiplied by 2, plus revenue carloads that are originated or terminated and interchanged (interline)].

(iv) The average load per car shall be determined from company records [ton-miles-revenue freight, divided by loaded freight car-miles].

(v) The ratios employed to separate the estimated system variable expenses between interchange, terminal and line-haul operations are calculated as follows:

(A) Theoretical interchange expenses are calculated by multiplying the number of revenue carload interchange handlings, paragraph (n)(4)(iii) of this section, by the interchange variable cost per carload for other than box, unequipped, refrigerator, tank and TOFC cars (ICC *Rail Carload Cost Scales,* Table 12, Line 6 or 14, appropriate region, multiplied by 100).

(B) Theoretical terminal carload expenses are calculated by multiplying the number of revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the average train variable terminal cost per carload for box-general service, equipped (one half of the terminal cost per carload ICC *Rail Carload Scales,* Table 3, appropriate region, line 2, col. (6)).

(C) Theoretical terminal lading expenses are calculated by multiplying the total terminal tons [terminal carload handlings, paragraph (n)(4)(ii) of this section, multiplied by average load per car, paragraph (n)(4)(iv) of this section] by the average train variable terminal cost per ton for box-general service, equipped [one half of the terminal cwt. cost, ICC *Rail Carload Cost Scales,* Table 3, appropriate region, line 2 col. (7), multiplied by 20].

(D) Theoretical line-haul car expenses are calculated by multiplying the carrier's loaded car-miles by the average train variable cost per car-mile excluding interchange, for box-general service, equipped [ICC *Rail Carload Cost Scales,* Table 3, appropriate region, Line 2, col. (4) minus Appendix B, appropriate region, Line 2, col. (4)].

(E) Theoretical line-haul lading expenses are calculated by multiplying the carrier's total ton-miles of revenue freight by the average train variable ton-mile cost for a box-general service, equipped [wt-mile cost ICC *Rail Carload Cost Scales,* Table 3, appropriate region, Line 2, col. (5), multiplied by 20].

(F) Theoretical station clerical expenses are calculated by multiplying total revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the variable station clerical cost per carload [one half of the station clerical cost per carload, ICC *Rail Carload Cost Scales,* Table 18, appropriate region, Line (2) multiplied by 100].

(G) Total theoretical system variable expenses are calculated by adding paragraph (n)(4)(v)(A) plus (n)(4)(v)(B) plus (n)(4)(v)(C) plus (n)(4)(v)(D) plus (n)(4)(v)(E) of this section.

(H) The ratio for interchange variable expenses is calculated by dividing total theoretical interchange variable expenses, paragraph (n)(4)(v)(A) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(I) The ratio for terminal variable expenses is calculated by dividing the total theoretical terminal variable expenses, paragraph (n)(4)(v)(B) plus (n)(4)(v)(C) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(J) The ratio for line-haul variable expenses is calculated by dividing total theoretical line-haul variable expenses, paragraph (n)(4)(v)(D) plus (n)(4)(v)(E) of this section, divided by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(K) The ratio for station clerical variable expenses is calculated by dividing total theoretical station clerical variable expenses, paragraph (n)(4)(v)(F) above, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) above.

(vi) The carrier's total system variable expenses are separated as follows:

(A) Total interchange variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the interchange variable expense ratio, paragraph (n)(4)(v)(H) of this section.

(B) Total terminal variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the terminal variable expense ratio, paragraph (n)(4)(v)(I) of this section.

(C) Total line-haul variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the line-haul variable expense ratio, paragraph (n)(4)(v)(J) of this section.

(D) Total station clerical variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section by the station clerical expense ratio, paragraph (n)(4)(v)(K) of this section.

(vii) The carrier's unit costs shall be determined as follows:

(A) The interchange cost per carload shall be calculated by dividing the

total interchange variable expense, paragraph (n)(4)(vi)(A) above by the total number of interchange handlings, paragraph (n)(4)(iii) of this section.

(B) The terminal cost per carload shall be calculated the total terminal variable expenses, paragraph (n)(4)(vi)(B) above, by the total number of terminal handlings, paragraph (n)(4)(ii) of this section.

(C) The line-haul cost per car-mile shall be calculated by dividing the total line-haul variable expenses, paragraph (n)(4)(vi)(C) of this section, by the total number of loaded car-miles

(D) The modified terminal cost per carload shall be calculated by adding the interchange cost per carload, paragraph (n)(4)(vii)(A) of this section, to the station clerical cost per carload total station clerical variable expense, paragraph (n)(4)(vi)(D) of this section, divided by the total number of terminal handlings, paragraph (n)(4)(ii) of this section].

(viii) The interchange costs shall be calculated by multiplying the interchange cost per carload, paragraph (n)(4)(vii)(A) above, by the number of carloads of traffic interchanged with other railroads.

(ix) The terminal costs shall be calculated by multiplying the modified terminal cost per carload, paragraph (n)(4)(vii)(D) of this section, times the number of carloads which originated or terminated on the branch during the subsidy year. To this amount add the normal terminal cost per carload, paragraph (n)(4)(vii)(B) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(x) The line-haul costs shall be calculated by multiplying the line-haul cost per car-mile, paragraph (n)(4)(vii)(C) of this section, by the loaded car-miles generated off the branch by cars originated or terminated on the branch during the subsidy year.

(5) The railroad shall be entitled to recover the impact of inflation on off-branch costs that occur during the period between the calendar year which is used for developing subsidy year unit costs and the 12 month period covered by the subsidy agreement. Calendar year used in this section shall mean the January 1 to December 31 period used to develop unit costs that are applied to the subsidy year operations. The impact of inflation on off-branch costs shall be calculated as follows:

(i) The railroad shall determine the following calendar year items from its Annual Report Form R-1 that was used in developing unit costs for the subsidy year and company records, (Class II and Class III railroads shall adapt the procedure using similar data from Forms R-2 or R-3 or company records).

(A) Total, railroad's Salaries and Wages, [Schedule 410, col. (b)];

(B) U.S. Government old-age retirement and unemployment insurance taxes (including medicare and supplemental annuities), [Schedule 451, Section (B)];

(C) Employee Health and Welfare expenses, [company records];

(D) Transportation: Train Operations; Locomotive Fuel, Materials, tools, supplies and lubricants; plus Transportation: Yard Operations; Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(E) Transportation: Train Operations; Electric Power Purchased or Produced for Motive Power, Materials, tools, fuel and lubricants and Purchased Services; plus Transportation: Yard Operations; Electric Power, Purchased or Produced for Motive Power, Materials, tools, fuels, and lubricants and Purchased Services, [Schedule 410, col. (c) and (d)];

(F) Equipment: locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation; Train Operations; Train Inspection and Lubrication, Materials, tools, supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Yard Operations; Switch Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives,

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Materials, tools, supplies, fuels, and lubricants, [Schedule 410, col. (c)];

(G) Railway Tax Accruals (excluding Federal Income Taxes and Payroll Taxes), [Schedule 451, Section (b)];

(H) Total operating expenses, freight portion, [Schedule 410, col. (f)];

(I) Total—All other operating expenses, paragraphs (N)(5)(i)(H) minus the sum of paragraphs (n)(5)(i)(A), (n)(5)(i)(B), (n)(5)(i)(C), (n)(5)(i)(D), (n)(5)(i)(E), and (n)(5)(i)(F).

(ii) The Railroad shall determine the following ratios:

(A) Employee Compensation Update Ratio.

(*1*) The calendar year average straight-time compensation per hour is determined by: adding the total straight-time compensation for transportation employees to the total straight-time compensation for train and engine employees; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, [ICC *Annual Report of Employees, Service and Compensation, Forms A and B*];

(*2*) The subsidy year average straight-time compensation per hour is determined by: adding the total straight-time compensation for transportation employees to the total straight-time compensation for train and engine employees, for the twelve months of the subsidy year; divided by the total straight-time service hours for transportation employees plus the total straight-time service hours for train and engine employees, for the twelve months of the subsidy year, [ICC *Monthly Report of Employees, Service and Compensation Forms A and B*];

(*3*) The Employee Compensation Update ratio is determined by dividing the subsidy year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*2*); by the calendar year average straight-time compensation per hour, paragraph (n)(5)(ii)(A)(*1*) of this section.

(B) Payroll Taxes Update Ratio.

(*1*) The calendar year employer contribution rate per hour is determined by: adding the employer maximum annual tax per employee for Railroad Retirement to the employer paid maximum annual tax per employee for Railroad Unemployment Insurance, [Bureau of the Actuary, U.S. Railroad Retirement Board]; divided by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*2*) The subsidy year employer contribution rate per hour is determined by: multiplying the employer's monthly rate for Railroad Retirement and Railroad Unemployment Insurance by the maximum monthly individual employee's wage base, respectively, for the twelve months of the subsidy year, [Bureau of the Actuary, U.S. Railroad Retirement Board]; and dividing by 2080, the average annual number of working hours per year. The quotient is added to the hourly rate for supplemental annuities, [National Railway Labor Conference];

(*3*) The Payroll Taxes Update Ratio is determined by: dividing the subsidy year contribution rate per hour, paragraph (n)(5)(ii)(B)(*2*) by the calendar year contribution rate per hour, paragraph (n)(5)(ii)(B)(*1*) of this section.

(C) Health and Welfare Costs Update Ratio.

(*1*) Calendar year Health and Welfare costs shall be determined by dividing total monthly costs for each month, company records, by the total employees, middle of the month count for each month, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total Calendar year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*2*) Subsidy year Health and Welfare costs are determined by dividing total monthly costs for each month, company records, by total employees, middle of the month count, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*]. The total subsidy year health and welfare costs is the sum of the twelve monthly average costs per employee developed in this subsection.

(*3*) The Health and Welfare Costs Update Ratio is determined by: dividing the subsidy year costs per employ-

ee, paragraph (n)(5)(ii)(C)(*2*) by the calendar year costs per employee, paragraph (n)(5)(ii)(C)(*1*) of this section.

(D) Employment Level Adjustment Ratio.

(*1*) The calendar year middle of the month employee counts are determined by: summing the middle of the month counts, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*], for the twelve months of the calendar year;

(*2*) The subsidy year middle of the month employee counts are determined by: summing the middle of the month counts, [ICC *Monthly Report of Employees, Service, and Compensation, Forms A and B*], for the twelve months of the subsidy year;

(*3*) The Employment Level Adjustment Ratio is determined by: dividing the subsidy year middle of the month counts, paragraph (n)(5)(ii)(D)(*2*), by the calendar year middle of the month counts, paragraph (n)(5)(ii)(D)(*1*) of this section.

(E) Fuel Cost Update Ratio.

(*1*) The calendar year average fuel cost per gallon is determined by: dividing the cost of Fuel, Diesel Oil, schedule 750, col (b), by the number of gallons, Diesel Oil, consumed in freight, passenger and yard switching service, schedule 750, col (b);

(*2*) The subsidy year average fuel cost per gallon is determined by: dividing the cost of fuel, diesel oil, company records, for the subsidy year, by the number of gallons, diesel oil consumed in freight, passenger and yard switching operations, company records, for the subsidy year.

(*3*) The Fuel Cost Update Ratio is determined by: dividing the subsidy year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*2*) by the calendar year fuel cost per gallon, paragraph (n)(5)(ii)(E)(*1*) of this section.

(F) Electric Power Cost Update Ratio.

(*1*) The calendar year cost per kilowatt hour is determined by: dividing the cost of electric kilowatt hours, [schedule 750, col. (c)] by the kilowatt hours consumed by freight, passenger, and yard switching operations, [schedule 750, col (c)];

(*2*) The subsidy year cost per kilowatt hour is determined by: dividing the cost of electric kilowatt hours, [company records], by the kilowatt hours consumed by freight, passenger, and yard switching operations, [company records];

(*3*) The Electric Power Cost Ratio is determined by: dividing the subsidy year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*2*) by the calendar year cost per kilowatt hour, paragraph (n)(5)(ii)(F)(*1*) of this section.

(G) Materials and Supplies Cost Update Ratio.

(*1*) The calendar year materials and supplies index is an average of the four calendar year quarterly indices, [Association of American Railroads (AAR), Economics and Finance Department, series Quarterly Material, Price and Wages (QMPW), applicable region].

(*2*) The subsidy year materials and supplies ratio is an average of the four subsidy year quarterly indices, [Association of American Railroads (AAR), Economics and Finance Department, Series Quarterly Material, Price, and Wages (QMPW), applicable region].

(*3*) The Materials and Supplies Cost Update Ratio is determined by: dividing the subsidy year ratio, paragraph (n)(5)(ii)(G)(*2*) by the calendar year ratio, paragraph (n)(5)(ii)(G)(*1*) of this section.

(iii) The Railroad shall determine the following subsidy year expense items:

(A) Total subsidy year salaries and wages, [calendar year total railroad salaries and wages, paragraph (n)(5)(i)(A) multiplied by the Employee Compensation Update Ratio, paragraph (n)(5)(ii)(A)(*3*)].

(B) U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), [calendar year U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(i)(B) multiplied by the Payroll Taxes Update Ratio, paragraph (n)(5)(ii)(B)(*3*)].

(C) Employee Health and Welfare Expenses, [calendar year, Employee Health and Welfare expenses, paragraph (n)(5)(i)(C) multiplied by the

Health and Welfare Costs Update Ratio, paragraph (n)(5)(ii)(C)(*3*)].

(D) Total employee compensation adjusted for employment changes, [subsidy year total railroad's salaries and wages paragraph (n)(5)(iii)(A); plus U.S. Government old-age retirement and unemployment insurance (including medicare and supplemental annuities), paragraph (n)(5)(iii)(B) plus Employee Health and Welfare Expenses, paragraph (n)(5)(iii)(C) multiplied by the employment level adjustment ratio, paragraph (n)(5)(ii)(D)(*3*)].

(E) Transportation: Train Operations; Locomotive Fuel, Materials, tools supplies, fuels, and lubricants; plus Transportation: Yard Operations: Locomotive Fuel, Materials, tools, supplies, fuels, and lubricants, [calendar year expenses, paragraph (n)(5)(i)(D) multiplied by the Fuel Cost Update Ratio, paragraph (n)(5)(ii)(E)(*3*)].

(F) Transportation: Train Operations; Elecric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services; plus Transportation: Yard operations: Electric Power Purchased or Produced for Motive Power, Materials, tools, supplies, fuels, and lubricants and Purchased Services, [calendar year expenses, paragraph (n)(5)(i)(E) multiplied by the Elecric Power Cost Update Ratio, paragraph (n)(5)(ii)(F)(*3*)].

(G) Equipment: Locomotives; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; Freight Cars; Repair and Maintenance, Materials, tools, supplies, fuels, and lubricants; plus Transportation: Train Operations; Train Inspection and Lubrication, Materials, tools, supplies, fuels, and lubricants; Train Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants; plus Transportation Yard Operations; Switch Crews, Materials, tools, supplies, fuels, and lubricants; Servicing Locomotives, Materials, tools, supplies, fuels, and lubricants, [calendar year expenses, paragraph (n)(5)(i)(F) multiplied by the Materials and Supplies Costs Update Ratio, Paragraph (n)(5)(ii)(G)(*3*)].

(H) Railway Tax Accruals (excluding Federal Income Taxes and Payroll taxes), [calendar year expenses, paragraph (n)(5)(i)(G) multiplied by 1.0].

(I) Total all other operating expenses, [Total calendar year all other operating expenses, paragraph (n)(5)(i)(I) multiplied by 1.0].

(iv) The railroad shall develop a composite index as follows:

(A) Total calendar year expenses [paragraph (n)(5)(i)(H)] plus calendar year Railway Tax Accruals (excluding Income Taxes and Payroll Taxes), paragraph (n)(5)(i)(G)];

(B) Total subsidy year expenses [sum of paragraphs (n)(5)(iii)(D), (n)(5)(iii)(E), (n)(5)(iii)(F), (n)(5)(iii)(G), (n)(5)(iii)(H), (n)(5)(iii)(I)].

(C) Composite Index [Total subsidy year expenses, paragraph (n)(5)(iv)(B), divided by total calendar year operating expenses, paragraph (n)(5)(iv)(A).

(v) The composite index, paragraph (n)(5)(iv)(C) above, shall be applied to the off-branch costs for twelve months of the subsidy year, as provided in § 1125.7(n). The difference between the off-branch costs as increased for inflation and the off-branch costs previously calculated by the railroad shall be included in the railroad's year-end Financial Status Report, as provided in § 1125.5(a).

(o) *Reasonable Management Fee.* Four and one-half percent of the total annual revenues attributable to the branch as determined pursuant to § 1125.6 shall be paid to the railroad as a reasonable management fee. If the railroad and the person offering the subsidy agree to an additional fee designed as an incentive to maximize revenues, minimize expenses, promote efficient service, or otherwise achieve public interest objectives, the railroad shall be paid such fee as determined in accordance with such agreement.

(p) *Return on investment—locomotives.* The return on investment in locomotives shall be separated between yard and road with a further separation between diesel and other (electric). The return on investment for each category of locomotives shall be calculated in accordance with the following procedure.

(1) The net investment for each category of locomotives shall be determined from the carrier's records.

(2) The cost of capital used in the calculation of return on investment for locomotives shall be the rate of interest developed for use in form 2 of the unrevised rail form A of the railroad.

(3) The return on investment for all categories of locomotives is calculated by multiplying the net investment in step (1) above by the costs of capital as determined in step (2).

(4) The return on investment shall be assigned to the branch on the basis of the ratio of locomotive unit hours on the branch to total locomotive unit hours on the system for the appliable classification of locomotive.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 8530, Mar. 2, 1978; 43 FR 30065, July 13, 1978; 44 FR 35228, June 19, 1979; 45 FR 19560, Mar. 26, 1980; 45 FR 27447, Apr. 23, 1980]

§ 1125.8 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under § 1125.7 (a), (b), (c), and (d) as having an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(a) *Maintenance of Way and Structures*—(1) *Roadway Machines.* All accounts designated XX-13-36 shall be assigned to the branch on the basis of the average repair cost, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on the actual number of days each type of machine is used on the branch.

(2) *Small Tools and Supplies.* All accounts designated XX-13-37 shall be assigned to the branch as follows: (i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch; (ii) the costs of small tools shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 11-11-10 through 11-11-17 and 11-11-48 plus 11-12-10 through 11-12-17 and 11-12-48 bear to the railroad's system total for the same accounts.

(3) *Fringe Benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salaries and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe Benefits—Running, Account 12-11-00,* total of all 11-11-XX accounts branch to system;

(ii) *Fringe Benefits—Switching, Account 12-12-00,* total of all 11-12-XX accounts branch to system; and

(iii) *Fringe Benefits—Other, Account 12-13-00,* total of all 11-13-XX accounts branch to system.

(b) *Maintenance of Equipment*—(1) *Locomotive Repairs and Maintenance.* All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be the actual costs for the specific equipment used.

(2) *Locomotive Depreciation—Account 61-22-00,* shall be separated between yard and road with a further separation between diesel and other (electric). The cost shall be assigned to the branch on the ratio of locomotive unit hours on the branch to the total locomotive unit hours on the system for the particular type of locomotive used to serve the branch The cost as-

signed under this account for specialized equipment devoted exclusively to branch line service shall be the actual cost for the specific equipment used.

(3) *Fringe Benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salaries and wages bear to the system total salaries and wages for each type of equipment as follows:

(i) *Locomotives—Account 12-21-00,* total of all 11-21-XX accounts branch to system.

(ii) *Other Equipment—Account 12-23-00,* total of all 11-23-XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car day and car mile cost calculations, in § 1125.77(g) of these regulations.

To this amount is added the branch totals in the balance of all 11-22-XX accounts. The ratio of this total branch amount to the system total for all 11-22-XX accounts is applied to Account 12-22-00, Fringe Benefits—Freight Cars.

(c) *Transportation*—(1) *Train Operations:* (i) *Engine Crews—Materials, Account 21-31-56; Train Crews—Materials, Account 21-31-57; Train Inspection and Lubrication—Salaries and Wages, Account 11-31-62;* and *Materials—Account 21-31-62.* If the branch is served by a local/way or through train crew, the costs in these accounts shall be assigned to the branch on the ratio of train hours on the branch to the total system train hours.

(ii) *Locomotive Fuel.* All accounts designated XX-31-67 shall be assigned to the branch on the ratio of road diesel locomotive unit hours on the branch to the total system road diesel locomotive unit hours.

(iii) *Electric Power Purchased or Produced for Motive Power.* All accounts designated XX-31-68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing Locomotives.* All accounts designated XX-31-69 shall be assigned to the branch on the ratio of road locomotive unit miles on the branch to the total system road locomotive unit miles.

(2) *Yard Operations*—(i) *Switch Crews—Materials, Account 21-32-64,* and *Servicing Locomotives,* all accounts designated XX-32-69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive fuel.* All accounts designated XX-32-67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric power purchased or produced for motive power.* All accounts designated XX-32-68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations*—(i) *Loss and damage claims processing.* All accounts designated XX-35-78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(4) *Transportation fringe benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salaries and wages bear to the total system salaries and wages for each activity shown below.

(i) Train operations, account 12-31-00, total of all 11-31-XX accounts branch to system.

(ii) Yard operations, account 12-32-00, total of all 11-32-XX accounts branch to system.

(iii) Train and yard operations common, account 12-33-00, total of all 11-33-XX accounts branch to system.

(iv) Specialized service operations, account 12-34-00, total of all 11-34-XX accounts branch to system.

(v) Administrative support, account 12-35-00, total of all 11-35-XX accounts branch to system.

(d) *General administrative.* (1) Fringe benefits, account 12-61-00, shall be assigned to the branch on the ratio that the total branch salaries and wages in all 11-61-XX accounts bear to the system total salaries and wages in all 11-61-XX accounts.

(e) The railroad shall be entitled to recover the impact of inflation on on-branch costs that occur during the period between the calendar year which is used for developing subsidy year unit costs and the 12 month period covered by the subsidy agreement. Calendar year used in this section shall mean the January 1, to December 31, period used to develop unit costs that are applied to the subsidy year operations.

(1) The updating procedures described in paragraphs (e)(1)(A), (e)(1)(B) and (e)(1)(C), of this section, shall be applied to the applicable categories of total on-branch costs as provided in § 1125.8 (b) and (c). The on-branch updated costs shall be calculated as follows:

(A) The increase in fuel costs shall be determined by multiplying the on-branch costs for Locomotive Fuel-Materials, [account 21-31-67 plus account 21-32-67] by the Fuel Cost Update Ratio, [Section 1125.7(n)(5)(ii)(E)(*3*), minus one].

(B) The increase in the Electric Power Costs shall be determined by: multiplying the on-branch costs for Electric Power Purchased or Produced-Materials, and Purchased Services [accounts, 21-31-68, 21-32-68, 41-31-68 and 41-32-68] by the Electric Power Cost Update Ratio, [Section 1125.7(n)(5)(ii)(F)(*3*), minus one].

(C) The increase in materials and supplies cost shall be determined by multiplying the on-branch materials and supplies costs, [the sum of accounts: Engine Crews-Materials (21-31-56); plus Train Crews-Materials (21-31-57); plus Train Inspection and Lubrication-Materials (21-31-62); plus Locomotive Repairs and Maintenance-Materials (21-21-41); plus Servicing Locomotive-Materials—(21-31-69; plus Switch Crews-Materials (21-32-64); plus Yard Operations: Servicing of Locomotives-Material (21-32-69)] by the Materials and Supplies costs Update Ratio, [Section 1125.7(n)(5)(ii)(G)(*3*), minus one].

(2) The railroad shall recalculate on-branch car-day and car-mile costs as described in § 1125.7(g) to reflect inflation occurring in Materials-Freight Cars-Repairs and Maintenance Account (21-22-42) for the period between the calendar year used for developing subsidy year unit costs and the 12-month period covered by the subsidy agreement.

(A) The increase in freight car repairs and maintenance costs shall be determined by multiplying the on-branch costs for these materials [Account 21-22-42—Materials-Freight Cars-Repairs and Maintenance] by the Materials and Supplies Cost Update Ratio [section 1125.7(n)(5)(ii)(G)(*3*)].

(B) The amount in paragraph (e)(1)(A) is substituted for Account 21-22-42—Freight Train Car-Repair and Maintenance calculated in § 1125.7(g). Then, the total freight train car costs per car-day and car-mile are recalculated. The recalculated car-day and car-mile costs are then applied to the appropriate service units incurred during the subsidy year, using the procedure described in § 1125.7(g).

(C) The railroad shall calculate the net increase in freight train car costs by subtracting the on-branch freight train car costs, as provided in § 1125.7(G), from the adjusted amount described in paragraph (e)(2)(B).

(3) The net inflationary impact developed for a on-branch costs described in paragraphs (e)(1)(A), (e)(1)(B), (e)(1)(C) and (e)(2)(C) shall be included in the railroad's year-end Financial Status Report as provided in § 1125.5(a).

[43 FR 1692, Jan. 11, 1978, as amended at 45 FR 27449, Apr. 23, 1980]

§ 1125.9 Return on the value of rail properties.

(a) *Valuation of rail properties.* The value of the rail properties on a branch shall be determined in accordance with the following:

(1) Only the following properties on a branch may be considered:

(i) Those that are used and useful to provide the rail services requested by the person offering a subsidy.

(ii) In the absence of a request for specific services by that person, those properties that are used and useful to provide the rail service performed on the branch at the time the final system plan became effective, or if no service was being performed at that time, the services that were last performed on the branch.

(2) The value of the properties shall be their net liquidation value for their highest and best use, consistent with applicable zoning and land use regulations, determined by computing their current market value for other than rail transportation purposes, less all costs of dismantling, and disposition of improvements necessary to make the remaining property available for its highest and best use.

(3) If the railroad and person offering a subsidy cannot, within a period of time that either of them considers reasonable after the beginning of negotiations for the payment of the subsidy, agree on the properties that are used and useful or the net liquidation value, or both, the one that considers that a reasonable period of time has elapsed may notify the other of its intention to have the matter arbitrated. Each of the parties shall then appoint a representative and the representatives shall select an arbitrator or arbitrators mutually acceptable to them. The decision of the arbitrator or arbitrators shall be final.

(4) If either party fails to appoint a representative within five days after receiving notice from the other party of its representative, or if the appointed representatives fail, within five days after the last one of them is appointed, to agree upon a mutually acceptable arbitrator or arbitrators, either party may submit the matter for arbitration to the American Arbitration Association pursuant to its commercial arbitration rules, and the decision of its arbitrator or arbitrators shall be final.

(5) In considering the value of properties under this section, the arbitrator or arbitrators shall consider, among other factors, any bona fide offer for the properties, or a part thereof, recent sales of adjoining or similar properties, any available appraisals, by a reputable appraiser, of the properties, or a part thereof.

(6) If the person offering a subsidy is a public body, each meeting of an arbitrator or arbitrators with the parties for the purpose of receiving information or evidence or to hear arguments or views shall be open to the public. Any interested member of the public may file written views, argument, or information with the arbitrator or arbitrators at any time within three days after the closing of the sessions that are open to the public.

(b) *Reasonable return on the value of the properties.* The reasonable return on the value of rail properties, as determined under § 1125.9(a) shall be the interest rate that is equal to the publicly quoted yield, to maturity or earliest call date, on the first business day of the month in which the subsidy agreement is entered into, for U.S. Treasury bonds or notes maturing or having an earliest call date approximately coterminous with the end of the subsidy period. United States Treasury bonds, redeemable at par before call or maturity for the sole purpose of applying the proceeds to payment of Federal estate taxes, and Treasury notes Series EA or EO shall be excluded from consideration for this purpose.

APPENDIX I—FORMAT FOR PRESENTATION OF SUBSIDY ESTIMATE

The following information is required to be furnished under § 1125.3(a)(1). All data shall be developed in accordance with the methodology set forth in § 1125.3.

REVENUES ESTIMATED

1. Freight revenues.
2. All other revenues and income.
3. Total estimated revenues (line 1 plus 2).

AVOIDABLE COST ESTIMATES

4. On-branch costs (lines 4A through 4L):
A. Maintenance of way and structures.
B. Rehabilitation.
C. Maintenance of equipment.
D. Transportation.
E. General administrative expenses.

F. Deadheading, taxi, and hotel costs.
G. Overhead movement costs.
H. Freight car costs.
I. Taxes.
J. Administrative fee.
K. Casualty reserve account.
L. Termination costs.
5. Off-branch costs (ratio times line 1).
6. Management fee.
7. Total avoidable cost estimate (lines 4, 5, and 6).

RETURN ON VALUE ESTIMATE

8. Valuation of property.
9. Rate of return.
10. Total return on value (line 8 times line 9).

ESTIMATED SUBSIDY PAYMENT

11. Estimated subsidy payment (line 3 minus lines 7 and 10).
12. Preexisting subsidy agreement payments included in line 2 above.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 30065, July 13, 1978]

Appendix II—Format for Financial Status Reports

The following information is required to be furnished under § 1125.4(b). All data shall be developed in accordance with the methodology set forth in §§ 1125.6, 1125.7, and 1125.9. The actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item, except that off-branch costs shall be estimated during the subsidy year by applying the ratio developed in the interim formula under § 1125.3(d) to the actual revenues shown in item 1.

REVENUES

1. Freight revenues.
2. All other revenues and income.
3. Total revenues (line 1 plus line 2).

AVOIDABLE COST

4. On-branch costs (lines 4A through 4L):
A. Maintenance of way and structures.
B. Rehabilitation.
C. Maintenance of equipment.
D. Transportation.
E. General administrative expenses.
F. Deadheading, taxi, and hotel costs.
G. Overhead movement costs.
H. Freight car costs.
I. Taxes.
J. Administrative fee.
K. Casualty reserve account.
L. Termination costs.
5. Off-branch costs.
6. Management fee.
7. Total avoidable cost (lines 4, 5, and 6).

RETURN ON VALUE

8. Valuation of property.
9. Rate of return.
10. Total return of value (line 8 times line 9).

SUBSIDY PAYMENT

11. Subsidy payment (line 3 minus lines 7 and 10).
12. Preexisting subsidy agreement payments included in line 2 above.

[43 FR 1692, Jan. 11, 1978, as amended at 43 FR 30065, July 13, 1978]

PART 1126—SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

Sec.
1126.1 Scope of rules in this part.
1126.2 Cost form and certification.
1126.3 Optional Cash Funding Procedures.

AUTHORITY: Sec. 601(e), Pub. L. 93-236, 87 Stat. 1021 (49 U.S.C. 11125).

SOURCE: 44 FR 6157; Jan. 31, 1979, unless otherwise noted.

§ 1126.1 Scope of rules in this part.

The rules in this part govern the procedures for the submission of costs and revenues to be followed by carriers subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of chapter 105, Subtitle IV, Title 49, U.S. Code, which are directed by the Commission to perform service over the lines of other carriers under the provisions of 49 U.S.C. 11125 (formerly 49 U.S.C. 1(16)(b)). The Commission's report in *Regional Rail Reorg. Act—Submission of Cost Data,* 348 I.C.C. 251 (1975), should be used by directed carriers for guidance in the preparation of the cost form. The report and its appendix set forth the Commission's policy as to the costs and revenues, incurred in or attributable to the conduct of directed operations, are allowable for inclusion in the cost form. Only such allowable costs and revenues will be considered by the Commission in its computation of payments due to the directed carrier under the provisions of section 11125.

§ 1126.2 Cost form and certification.

The expenses and revenues incurred in the conduct of directed service shall be recorded in accordance with the cost form and instructions below:

Instructions to Cost Form

1. Enter in column (7) the expenses directly assignable to the directed traffic moved. This includes wages, rentals and other expenses paid or incurred by the applicant and chargeable only to the directed traffic.

2. Enter in column (8) the portion of common expenses allocable to the directed traffic. Common expenses are those expenses paid or incurred for the movement of the directed traffic which are common or jointly incurred for the movement of other traffic. All expenses should be assigned directly wherever possible. Expenses not directly assignable should be apportioned on the basis of the factor suggested in column (10) or if necessary, on the basis of a more readily available and equitable factor, if such use is justified to the Commission. The relationship of the carriers' own revenues and the directed traffic revenues is an acceptance apportionment factor in cases where there are no other available apportionment factors.

3. Enter in column (9) the total of columns (7) and (8).

4. The cost of rehabilitation of the line necessary to permit operation should be shown in the way and structures accounts. Expenditures for substantial improvements shall require authorization by the Commission.

5. Expenses included in lines 53, 54, 55, 131, 140, 159, 169, 176, 183, 190, 249, and 262 should be identified on a separate sheet.

COST FORM

Sheet 1 of 15

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Applied Apportionment Factors (10)
	Operating Expenses									
	Way and Structures									
1	Administration - Track	11-13-02	21-13-02	41-13-02	61-13-02		xxx	xxx	xxx	xxx
2	Roadway Maint. - Running	11-11-10	21-11-10	39/40/41-11-10	61-11-10		xxx	xxx	xxx	xxx
3	Roadway Maint. - Switching	11-12-10	21-12-10	39/40/41-12-10	61-12-10		xxx	xxx	xxx	xxx
4	Road Property Damaged - Running	11-11-48	21-11-48	39/40/41-11-48	61-11-48		xxx	xxx	xxx	xxx
5	Road Property Damaged - Switching	11-12-48	21-12-48	39/40/41-12-48	61-12-48		xxx	xxx	xxx	xxx
6	Ties - Running	xxx	21-11-13	xxx	xxx		xxx	xxx	xxx	xxx
7	Ties - Switching	xxx	21-12-13	xxx	xxx		xxx	xxx	xxx	xxx
8	Rails - Running	xxx	21-11-14	xxx	xxx		xxx	xxx	xxx	xxx
9	Rails - Switching	xxx	21-12-14	xxx	xxx		xxx	xxx	xxx	xxx
10	Other Track Material-Running	xxx	21-11-15	xxx	xxx		xxx	xxx	xxx	xxx
11	Other Track Material-Switching	xxx	21-12-15	xxx	xxx		xxx	xxx	xxx	xxx
12	Ballast - Running	xxx	21-11-16	xxx	xxx		xxx	xxx	xxx	xxx
13	Ballast - Switching	xxx	21-12-16	xxx	xxx		xxx	xxx	xxx	xxx
14	Track Laying & Surfacing - Running	11-11-17	21-11-17	39/40/41-11-17	61-11-17		xxx	xxx	xxx	xxx
15	Track Laying & Surfacing - Switching	11-12-17	21-12-17	39/40/41-12-17	61-12-17		xxx	xxx	xxx	xxx
16	Total - Ls. 1 thru 15									Equated Track Miles
17	Administration - Signals	11-13-04	21-13-04	41-13-04	61-13-04		xxx	xxx	xxx	xxx
18	Station and Office Bldgs.	11-13-23	21-13-23	39/40/41-13-23	61-13-23		xxx	xxx	xxx	xxx
19	Motor Veh. Loading & Distribution Facilities	11-13-33	21-13-33	39/40/41-13-33	61-13-33		xxx	xxx	xxx	xxx
20	Facilities for Other Specialized Ser. Opns.	11-13-35	21-13-35	39/40/41-13-35	61-13-35		xxx	xxx	xxx	xxx
21	Signals & Interlockers - Running	11-11-19	21-11-19	39/40/41-11-19	61-11-19		xxx	xxx	xxx	xxx

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
22	Signals and Interlockers - Switching	11-12-19	21-12-19	39/40/41-12-19	61-12-19		xxx	xxx	xxx	xxx
23	Total - Ls. 17 thru 22									Carloads Handled
24	Administration - Communications	11-13-05	21-13-05	41-13-05	61-13-05		xxx	xxx	xxx	xxx
25	Loco. Serv. Facilities	11-13-27	21-13-27	39/40/41-13-27	61-13-27		xxx	xxx	xxx	xxx
26	Communication Systems	11-13-20	21-13-20	39/40/41-13-20	61-13-20		xxx	xxx	xxx	xxx
27	Total - Ls. 24 thru 26									Revenue Tons
28	Shop Bldgs. - Locomotives	11-13-24	21-13-24	39/40/41-13-24	61-13-24		xxx	xxx	xxx	xxx
29	Shop Bldgs. - Freight Cars	11-13-25	21-13-25	39/40/41-13-25	61-13-25		xxx	xxx	xxx	xxx
30	Shop Bldgs. - Other Equip.	11-13-26	21-13-26	39/40/41-13-26	61-13-26		xxx	xxx	xxx	xxx
31	Road Property Damaged - Other	11-13-48	21-13-48	39/40/41-13-48	61-13-48		xxx	xxx	xxx	xxx
32	Total - Ls. 28 thru 31									Total Repair Expenses
33	Misc. Bldgs. & Structures	11-13-28	21-13-28	39/40/41-13-28	61-13-28		xxx	xxx	xxx	xxx
34	Other Marine Terminals	11-13-32	21-13-32	39/40/41-13-32	61-13-32		xxx	xxx	xxx	xxx
35	Coal Terminals	11-13-29	21-13-29	39/40/41-13-29	61-13-29		xxx	xxx	xxx	xxx
36	Ore Terminals	11-13-30	21-13-30	39/40/41-13-30	61-13-30		xxx	xxx	xxx	xxx
37	Total - Ls. 33 thru 36									Miles of Rd. Trailers Handled Loaded & Empty
38	TOFC/COFC Terminals	11-13-31	21-13-31	39/40/41-13-31	61-13-31					
39	Administration - Bridges & Bldgs.	11-13-03	21-13-03	41-13-03	61-13-03		xxx	xxx	xxx	xxx
40	Tunnels & Subways - Running	11-11-11	21-11-11	39/40/41-11-11	61-11-11		xxx	xxx	xxx	xxx

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
41	Tunnels & Subways - Switching	11-12-11	21-12-11	39/40/41-12-11	61-12-11		xxx	xxx	xxx	xxx
42	Bridges & Culverts - Running	11-11-12	21-11-12	39/40/41-11-12	61-11-12		xxx	xxx	xxx	xxx
43	Bridges & Culverts - Switching	11-12-12	21-12-12	39/40/41-12-12	61-12-12		xxx	xxx	xxx	xxx
44	Total - Ls. 39 thru 43									Equated Track Miles
45	Sum of Ls. 16,23,27,32,37, 38, and 44									xxx
46	Adminstration - Other	11-13-06	21-13-06	41-13-06	61-13-06		xxx	xxx	xxx	xxx
47	Fringe Benefits - Running	xxx	xxx	xxx	12-11-00		xxx	xxx	xxx	xxx
48	Fringe Benefits - Switching	xxx	xxx	xxx	12-12-00		xxx	xxx	xxx	xxx
49	Fringe Benefits - Other	xxx	xxx	xxx	12-13-00		xxx	xxx	xxx	xxx
50	Casualties & Insurances - Running	xxx	xxx	xxx	52/53 - 11-00		xxx	xxx	xxx	xxx
51	Casualties & Insurances - Switching	xxx	xxx	xxx	52/53 - 12-00		xxx	xxx	xxx	xxx
52	Casualties & Insurances - Other	xxx	xxx	xxx	52/53 - 13-00		xxx	xxx	xxx	xxx
53	Other - Running	11-11-99	21-11-99	41-11-99	61-11-99		xxx	xxx	xxx	xxx
54	Other - Switching	11-12-99	21-12-99	41-12-99	61-12-99		xxx	xxx	xxx	xxx
55	Other - Other	11-13-99	21-13-99	41-13-99	61-13-99		xxx	xxx	xxx	xxx
56	Total - Ls. 46 thru 55									Line 45
57	Depreciation - Running	xxx	xxx	xxx	62-11-00		xxx	xxx	xxx	xxx
58	Depreciation - Switching	xxx	xxx	xxx	62-12-00		xxx	xxx	xxx	xxx
59	Depreciation - Other	xxx	xxx	xxx	62-13-00		xxx	xxx	xxx	xxx
60	Roadway Machines	11-13-36	21-13-36	39/40/41-13-36	61-13-36		xxx	xxx	xxx	xxx
61	Highway Grade Crossings-Running	11-11-22	21-11-22	39/40/41-11-22	61-11-22		xxx	xxx	xxx	xxx
62	Highway Grade Crossings - Switching	11-12-22	21-12-22	39/40/41-12-22	61-12-22		xxx	xxx	xxx	xxx
63	Total - Ls. 57 thru 62									Miles of Road

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
64	Electric Power Systems	11-13-21	21-13-21	39/40/41-13-21	61-13-21					Electric Locomotive Unit Miles or Line 96, 105, & 116
65	Joint Facility - Debit - Running	xxx	xxx	37-11-00	xxx		xxx	xxx	xxx	xxx
66	Joint Facility - Debit - Switching	xxx	xxx	37-12-00	xxx		xxx	xxx	xxx	xxx
67	Joint Facility - Debit - Other	xxx	xxx	37-13-00	xxx		xxx	xxx	xxx	xxx
68	Joint Facility - (Credit) - Running	xxx	xxx	38-11-00	xxx		xxx	xxx	xxx	xxx
69	Joint Facility - (Credit) - Switching	xxx	xxx	38-12-00	xxx		xxx	xxx	xxx	xxx
70	Joint Facility - (Credit) - Other	xxx	xxx	38-13-00	xxx		xxx	xxx	xxx	xxx
71	Total - Ls. 65 thru 70									Miles of Track
72	Small Tools & Supplies	11-13-37	21-13-37	39/40/41-13-37	61-13-37		xxx	xxx	xxx	xxx
73	Snow Removal	11-13-38	21-13-38	30/40/41-13-38	61-13-38		xxx	xxx	xxx	xxx
74	Lease Rentals - Debit - Running	xxx	xxx	31-11-00	xxx		xxx	xxx	xxx	xxx
75	Lease Rentals - Debit - Switching	xxx	xxx	31-12-00	xxx		xxx	xxx	xxx	xxx
76	Lease Rentals - Debit - Other	xxx	xxx	31-13-00	xxx		xxx	xxx	xxx	xxx
77	Lease Rentals - (Credit) - Running	xxx	xxx	32-11-00	xxx		xxx	xxx	xxx	xxx
78	Lease Rentals - (Credit) - Switching	xxx	xxx	32-12-00	xxx		xxx	xxx	xxx	xxx
79	Lease Rentals - (Credit) - Other	xxx	xxx	32-13-00	xxx		xxx	xxx	xxx	xxx

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
80	Joint Facility Rents - Debit - Running	xxx	xxx	33-11-00	xxx		xxx	xxx	xxx	xxx
81	Joint Facility Rents - Debit - Switching	xxx	xxx	33-12-00	xxx		xxx	xxx	xxx	xxx
82	Joint Facility Rents - Debit - Other	xxx	xxx	33-13-00	xxx		xxx	xxx	xxx	xxx
83	Joint Facility Rents -(Credit)- Running	xxx	xxx	34-11-00	xxx		xxx	xxx	xxx	xxx
84	Joint Facility Rents -(Credit)- Switching	xxx	xxx	34-12-00	xxx		xxx	xxx	xxx	xxx
85	Joint Facility Rents -(Credit)- Other	xxx	xxx	34-13-00	xxx		xxx	xxx	xxx	xxx
86	Other Rents - Debit - Running	xxx	xxx	35-11-00	xxx		xxx	xxx	xxx	xxx
87	Other Rents - Debit - Switching	xxx	xxx	35-12-00	xxx		xxx	xxx	xxx	xxx
88	Other Rents - Debit - Other	xxx	xxx	35-13-00	xxx		xxx	xxx	xxx	xxx
89	Other Rents -(Credit) - Running	xxx	xxx	36-11-00	xxx		xxx	xxx	xxx	xxx
90	Other Rents -(Credit) - Switching	xxx	xxx	36-12-00	xxx		xxx	xxx	xxx	xxx
91	Other Rents -(Credit) - Other	xxx	xxx	36-13-00	xxx		xxx	xxx	xxx	xxx
92	Total - Ls. 72 thru 91							xxx		Direct
93	TOTAL - Way & Structures - Sum of Ls. 16, 23, 27, 32, 37, 38, 44, 56, 63, 64, 71, and 92						xxx	xxx		xxx

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Direct Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
	Equipment									
	Locomotives									
94	Lease Rentals - Debit	xxx	xxx	31-21-00	xxx		xxx	xxx	xxx	xxx
95	Other Rents - Debit	xxx	xxx	35-21-00	xxx		xxx	xxx	xxx	xxx
96	Total - Ls. 94 and 95									Locomotive Unit Miles
97	Repair & Maintenance	11-21-41	21-21-41	39/41-21-41	61-21-41		xxx	xxx	xxx	xxx
98	Repairs Billed to Others-(Credit)	xxx	xxx	40-21-41	xxx		xxx	xxx	xxx	xxx
99	Equipment Damaged	11-21-48	21-21-48	39/41-21-48	61-21-48		xxx	xxx	xxx	xxx
100	Repairs Billed to Others-(Credit)	xxx	xxx	40-21-48	xxx		xxx	xxx	xxx	xxx
101	Joint Facility Rents - Debit	xxx	xxx	37-21-00	xxx		xxx	xxx	xxx	xxx
102	Joint Facility Rents - (Credit)	xxx	xxx	34-21-00	xxx		xxx	xxx	xxx	xxx
103	Lease Rents - (Credit)	xxx	xxx	32-21-00	xxx		xxx	xxx	xxx	xxx
104	Other Rents - (Credit)	xxx	xxx	36-21-00	xxx		xxx	xxx	xxx	xxx
105	Total - Ls. 97 thru 104									Gross Ton-Miles
	Freight Cars									
106	Repair & Maintenance	11-22-42	21-22-42	39/41-22-42	61-22-42		xxx	xxx	xxx	xxx
107	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-42	xxx		xxx	xxx	xxx	xxx
108	Equipment Damaged	11-22-48	21-22-48	39/41-22-48	61-22-48		xxx	xxx	xxx	xxx
109	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-48	xxx		xxx	xxx	xxx	xxx
110	Lease Rentals - Debit	xxx	xxx	31-22-00	xxx		xxx	xxx	xxx	xxx
111	Lease Rentals - (Credit)	xxx	xxx	32-22-00	xxx		xxx	xxx	xxx	xxx
112	Joint Facility Rents - Debit	xxx	xxx	33-22-00	xxx		xxx	xxx	xxx	xxx
113	Joint Facility Rents -(Credit)	xxx	xxx	34-22-00	xxx		xxx	xxx	xxx	xxx
114	Other Rents - Debit	xxx	xxx	35-22-00	xxx		xxx	xxx	xxx	xxx
115	Other Rents - (Credit)	xxx	xxx	36-22-00	xxx		xxx	xxx	xxx	xxx
116	Total - Ls. 106 thru 115									Freight-Train Car Miles: Cars-loaded & empty

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
117	Other Equipment Repair & Maint. - Trucks, Trailers, & Containers - Revenue Service	11-23-43	21-23-43	39/41-23-43	61-23-43		xxx	xxx	xxx	xxx
118	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-43	xxx		xxx	xxx	xxx	xxx
119	Total - Ls. 117 and 118									Veh.-Miles - Loaded & Empty
120	Floating Equip. - Revenue Service	11-23-44	21-23-44	39/41-23-44	61-23-44		xxx	xxx	xxx	xxx
121	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-44	xxx		xxx	xxx	xxx	xxx
122	Total - Ls. 120 and 121									No. of Carloads Handled
123	Administration	11-21-01	21-21-01	41-21-01	61-21-01		xxx	xxx	xxx	xxx
124	Machinery Repair	11-21-40	21-21-40	39/41-21-40	61-21-40		xxx	xxx	xxx	xxx
125	Repairs Billed to Others - (Credit)	xxx	xxx	40-21-40	xxx		xxx	xxx	xxx	xxx
126	Fringe Benefits	xxx	xxx	xxx	12-21-00		xxx	xxx	xxx	xxx
127	Other Casualties & Insurance	xxx	xxx	xxx	52/53-21-00		xxx	xxx	xxx	xxx
128	Joint Facility - Debit	xxx	xxx	37-21-00	xxx		xxx	xxx	xxx	xxx
129	Joint Facility -(Credit)	xxx	xxx	38-21-00	xxx		xxx	xxx	xxx	xxx
130	Depreciation	xxx	xxx	xxx	62-21-00		xxx	xxx	xxx	xxx
131	Other	11-21-99	21-21-99	41-21-99	61-21-99		xxx	xxx	xxx	xxx
132	Administration	11-22-01	21-22-01	41-22-01	61-22-01		xxx	xxx	xxx	xxx
133	Machinery Repair	11-22-40	21-22-40	39/41-22-40	61-22-40					
134	Repairs Billed to Others - (Credit)	xxx	xxx	40-22-40	xxx		xxx	xxx	xxx	xxx
135	Fringe Benefits	xxx	xxx	xxx	12-22-00		xxx	xxx	xxx	xxx
136	Other - Casualties & Insurance	xxx	xxx	xxx	52/53-22-00		xxx	xxx	xxx	xxx

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Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Direct Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
137	Joint Facility - Debit	xxx	xxx	37-22-00	xxx		xxx	xxx	xxx	xxx
138	Joint Facility -(Credit)	xxx	xxx	38-22-00	xxx		xxx	xxx	xxx	xxx
139	Depreciation	xxx	xxx	xxx	62-22-00		xxx	xxx	xxx	xxx
140	Other	11-22-99	21-22-99	41-22-99	61-22-99		xxx	xxx	xxx	xxx
141	Administration	11-23-01	21-23-01	41-23-01	61-23-01		xxx	xxx	xxx	xxx
142	Pass. & Other Rev. Equip.	11-23-45	21-23-45	39/41-23-45	61-23-45		xxx	xxx	xxx	xxx
143	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-45	xxx		xxx	xxx	xxx	xxx
144	Repair & Maint. - Machinery	11-23-40	21-23-40	39/41-23-40	61-23-40		xxx	xxx	xxx	xxx
145	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-40	xxx		xxx	xxx	xxx	xxx
146	Repair & Maint. - Computers & Data Processing Systems	11-23-46	21-23-46	39/41-23-46	61-23-46		xxx	xxx	xxx	xxx
147	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-46	xxx		xxx	xxx	xxx	xxx
148	Repair & Maint. - Work & Other Non-Rev. Equip.	11-23-47	21-23-47	39/41-23-47	61-23-47		xxx	xxx	xxx	xxx
149	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-47	xxx		xxx	xxx	xxx	xxx
150	Equipment Damaged	11-23-48	21-23-48	39/41-23-48	61-23-48		xxx	xxx	xxx	xxx
151	Repairs Billed to Others - (Credit)	xxx	xxx	40-23-48	xxx		xxx	xxx	xxx	xxx
152	Fringe Benefits	xxx	xxx	xxx	12-23-00		xxx	xxx	xxx	xxx
153	Other - Casualties & Insurance	xxx	xxx	xxx	52/53-23-00		xxx	xxx	xxx	xxx
154	Joint Facility Rents - Debit	xxx	xxx	33-23-00	xxx		xxx	xxx	xxx	xxx
155	Joint Facility Rents -(Credit)	xxx	xxx	34-23-00	xxx		xxx	xxx	xxx	xxx
156	Joint Facility - Debit	xxx	xxx	37-23-00	xxx		xxx	xxx	xxx	xxx
157	Joint Facility -(Credit)	xxx	xxx	38-23-00	xxx		xxx	xxx	xxx	xxx
158	Depreciation	xxx	xxx	xxx	62-23-00		xxx	xxx	xxx	xxx
159	Other	11-23-99	21-23-99	41-23-99	61-23-99		xxx	xxx	xxx	xxx
160	Total - Ls. 123 thru 159									Total Repair Expenses

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
161	Lease Rentals - Debit	xxx	xxx	31-23-00	xxx					Assign where Applicable
162	Lease Rentals - (Credit)	xxx	xxx	32-23-00	xxx					Assign where Applicable
163	Other Rents - Debit	xxx	xxx	35-23-00	xxx					Assign where Applicable
164	Other Rents - (Credit)	xxx	xxx	36-23-00	xxx					Assign where Applicable
165	Miscellaneous Rents	xxx	xxx	543	xxx					Assign where Applicable
166	Total Equipment - Sum of Ls. 96, 105, 116, 119, 122, 160, 161-165						xxx	xxx		xxx

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directing Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
	Transportation									
	Train Operations									
167	Administration	11-31-01	21-31-01	41-31-01	61-31-01		xxx	xxx	xxx	xxx
168	Fringe Benefits	xxx	xxx	xxx	12-31-00		xxx	xxx	xxx	xxx
169	Other	11-31-99	21-31-99	41-31-99	61-31-99		xxx	xxx	xxx	xxx
170	Other Casualties & Insurance	xxx	xxx	xxx	52/53-31-00		xxx	xxx	xxx	xxx
171	Dispatching Trains	11-31-58	21-31-58	41-31-58	61-31-58		xxx	xxx	xxx	xxx
172	Total - Ls. 167 thru 171									Train-Miles
	Administrative Support Opns.									
173	Administration	11-35-01	21-35-01	41-35-01	61-35-01		xxx	xxx	xxx	xxx
174	Fringe Benefits	xxx	xxx	xxx	12-35-00		xxx	xxx	xxx	xxx
175	Casualties & Insurance	xxx	xxx	xxx	52/53-35-00		xxx	xxx	xxx	xxx
176	Other	11-35-99	21-35-99	41-35-99	61-35-99		xxx	xxx	xxx	xxx
177	Employees Performing Clerical & Acctng. Functions	11-35-76	21-35-76	41-35-76	61-35-76		xxx	xxx	xxx	xxx
178	Communication Systems Oper.	11-35-77	21-35-77	41-35-77	61-35-77		xxx	xxx	xxx	xxx
179	Total - Ls. 173 thru 178									Revenue Tons
	Yard Operations									
180	Administration	11-32-01	21-32-01	41-32-01	61-32-01		xxx	xxx	xxx	xxx
181	Fringe Benefits	xxx	xxx	xxx	12-32-00		xxx	xxx	xxx	xxx
182	Other Casualties & Insurance	xxx	xxx	xxx	52/53-32-00		xxx	xxx	xxx	xxx
183	Other	11-32-99	21-32-99	41-32-99	61-32-99		xxx	xxx	xxx	xxx
184	Oper. Switches, Signals, Retarders & Humps	xxx	21-32-59	41-32-59	61-32-59		xxx	xxx	xxx	xxx
185	Switch Crews	xxx	21-32-64	41-32-64	61-32-64		xxx	xxx	xxx	xxx
186	Controlling Operations	xxx	21-32-65	41-32-65	61-32-65		xxx	xxx	xxx	xxx
187	Yard & Terminal Clerical	xxx	21-32-66	41-32-66	61-32-66		xxx	xxx	xxx	xxx
188	Administration-Special Service	11-34-01	21-34-01	41-34-01	61-34-01		xxx	xxx	xxx	xxx
189	Fringe Benefits - Special Service	xxx	xxx	xxx	12-34-00		xxx	xxx	xxx	xxx
190	Other - Special Service	11-34-99	21-34-99	41-34-99	61-34-99		xxx	xxx	xxx	xxx
191	Casualties & Insurance - Special Service	xxx	xxx	xxx	52/53-34-00		xxx	xxx	xxx	xxx
192	Total - Ls. 180 thru 191									Yd. Switching Loco. unit-miles

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Direct Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Supported Apportionment Factors (10)
193	Operating Signals & Interlockers	11-31-59	21-31-59	41-31-59	61-31-59		xxx	xxx	xxx	xxx
194	Highway Crossing, Protection	11-31-61	21-31-61	41-31-61	61-31-61		xxx	xxx	xxx	xxx
195	Operating Drawbridges	11-31-60	21-31-60	41-31-60	61-31-60		xxx	xxx	xxx	xxx
196	Clearing Wrecks	11-31-63	21-31-63	41-31-63	61-31-63		xxx	xxx	xxx	xxx
197	Clearing Wrecks	11-32-63	21-32-63	41-32-63	61-32-63		xxx	xxx	xxx	xxx
198	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-31-00		xxx	xxx	xxx	xxx
199	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-32-00		xxx	xxx	xxx	xxx
200	Frt. Lost or Damaged - All Other	xxx	xxx	xxx	51-33-00		xxx	xxx	xxx	xxx
201	Frt. Lost or Damaged - Solely Related	xxx	xxx	xxx	51-34-00		xxx	xxx	xxx	xxx
202	Loss & Damage, Claims Processing	11-35-78	21-35-78	41-35-78	61-35-78		xxx	xxx	xxx	xxx
203	Total - Ls. 193 thru 202									Train-Miles
204	Loading, Unloading & Local Marine	11-34-74	21-34-74	41-34-74	61-34-74		xxx	xxx	xxx	xxx
205	P&D, Marine Line-Haul & Rail Substitute Service	11-34-73	21-34-73	41-34-73	61-34-73		xxx	xxx	xxx	xxx
206	Total - Ls. 204 and 205									Trailers handled-Loaded & Empty
207	Controlling Operations	11-32-65	xxx	xxx	xxx		xxx	xxx	xxx	xxx
208	Yd. & Terminal Clerical	11-32-66	xxx	xxx	xxx		xxx	xxx	xxx	xxx
209	Switch Crews	11-32-64	xxx	xxx	xxx		xxx	xxx	xxx	xxx
210	Operating Switches, Signals, Retarders & Humps	11-32-59	xxx	xxx	xxx		xxx	xxx	xxx	xxx
211	Locomotive Fuel	11-32-67	21-32-67	41-32-67	61-32-67		xxx	xxx	xxx	xxx
212	Electric Power Purchased/ Produced for Motive Power	11-32-68	21-32-68	41-32-68	61-32-68		xxx	xxx	xxx	xxx
213	Servicing Locomotives	11-32-69	21-32-69	41-32-69	61-32-69		xxx	xxx	xxx	xxx
214	Joint Facility - Debit	xxx	xxx	37-32-00	xxx		xxx	xxx	xxx	xxx
215	Joint Facility - (Credit)	xxx	xxx	38-32-00	xxx		xxx	xxx	xxx	xxx
216	Total - Ls. 207 thru 215									Yd. Switching Loco. Unit-Miles

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols.(2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols.(7)+(8) (9)	Suggested Apportionment Factors (10)
217	Engine Crews	11-31-56	xxx	xxx	xxx		xxx	xxx	xxx	xxx
218	Train Crews	11-31-57	xxx	xxx	xxx		xxx	xxx	xxx	xxx
219	Total - Ls. 217 and 218									Accts. 11-31-66 & 11-31-57 Direct Assignment*
220	Locomotive Fuel	11-31-67	21-31-67	41-31-67	61-31-67		xxx	xxx	xxx	xxx
221	Electric Power Purchased/ Produced for Motive Power	11-31-68	21-31-68	41-31-68	61-31-68		xxx	xxx	xxx	xxx
222	Servicing Locomotives	11-31-69	21-31-69	41-31-69	61-31-69		xxx	xxx	xxx	xxx
223	Joint Facility - Debit	xxx	xxx	37-31-00	xxx		xxx	xxx	xxx	xxx
224	Joint Facility - (Credit)	xxx	xxx	38-31-00	xxx		xxx	xxx	xxx	xxx
225	Joint Facility - Debit	xxx	xxx	37-34-00	xxx		xxx	xxx	xxx	xxx
226	Joint Facility - (Credit)	xxx	xxx	38-34-00	xxx		xxx	xxx	xxx	xxx
227	Joint Facility - Debit	xxx	xxx	37-35-00	xxx		xxx	xxx	xxx	xxx
228	Joint Facility - (Credit)	xxx	xxx	38-35-00	xxx		xxx	xxx	xxx	xxx
229	Total - Ls. 220 thru 228									Loco. unit-miles incl. train switching
230	Engine Crews	xxx	21-31-56	41-31-56	61-31-56		xxx	xxx	xxx	xxx
231	Train Crews	xxx	21-31-57	41-31-57	61-31-57		xxx	xxx	xxx	xxx
232	Train Inspection & Lubrication	11-31-62	21-31-62	41-31-62	61-31-62		xxx	xxx	xxx	xxx
233	Cleaning Car Interiors	11-33-70	21-33-70	41-33-70	xxx		xxx	xxx	xxx	xxx
234	Adjusting & Transferring Loads	11-33-71	21-33-71	41-33-71	xxx		xxx	xxx	xxx	xxx
235	Car Loading Devices & Grain Doors	11-33-72	21-33-72	41-33-72	xxx		xxx	xxx	xxx	xxx
236	Protective Services	11-34-75	21-34-75	41-34-75	61-34-75		xxx	xxx	xxx	xxx
237	Fringe Benefits	xxx	xxx	xxx	12-33-00		xxx	xxx	xxx	xxx
238	Total - Ls. 230-237									Frt. Train Car-Miles Loaded & Empty incl. Caboose
239	TOTAL TRANSPORTATION - Sum of Ls. 172, 179, 192, 203, 206, 216, 219, 229, & 238						xxx	xxx		xxx

For *, see Sheet No. 15.

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
	General and Administrative									
240	Officers-General Superintendence	11-61-01	21-61-01	41-61-01	61-61-01		xxx	xxx	xxx	xxx
241	Acctg., Auditing & Finance	11-61-86	21-61-86	41-61-86	61-61-86		xxx	xxx	xxx	xxx
242	Management Services & Data Processing	11-61-87	21-61-87	41-61-87	61-61-87		xxx	xxx	xxx	xxx
243	Industrial Development	11-61-90	21-61-90	41-61-90	61-61-90		xxx	xxx	xxx	xxx
244	Personnel & Labor Relations	11-61-91	21-61-91	41-61-91	61-61-91		xxx	xxx	xxx	xxx
245	Legal & Secretarial	11-61-92	21-61-92	41-61-92	61-61-92		xxx	xxx	xxx	xxx
246	Research & Development	11-61-94	21-61-94	41-61-94	61-61-94		xxx	xxx	xxx	xxx
247	Casualties & Insurance	xxx	xxx	xxx	52/53-61-00		xxx	xxx	xxx	xxx
248	Fringe Benefits	xxx	xxx	xxx	12-61-00		xxx	xxx	xxx	xxx
249	Other	11-61-99	21-61-99	41-61-99	61-61-99		xxx	xxx	xxx	xxx
250	Joint Facility - Debit	xxx	xxx	37-61-00	xxx		xxx	xxx	xxx	xxx
251	Joint Facility - (Credit)	xxx	xxx	38-61-00	xxx		xxx	xxx	xxx	xxx
252	Write down of Uncollectible Accounts	xxx	xxx	xxx	63-61-00		xxx	xxx	xxx	xxx
253	Total - Ls. 240 thru 252									Apportion on the basis of total expenses, Ls. 93,166, & 239
254	Marketing	11-61-88	21-61-88	41-61-88	61-61-88		xxx	xxx	xxx	xxx
255	Sales	11-61-89	21-61-89	41-61-89	61-61-89		xxx	xxx	xxx	xxx
256	Public Relations & Advertising	11-61-93	21-61-93	41-61-93	61-61-93		xxx	xxx	xxx	xxx
257	Total - Ls. 254 thru 256									Line 253
258	Total General & Administrative, Ls. 253 and 257						xxx	xxx		xxx
259	TOTAL EXPENSES - Ls. 93, 166, 239, and 258						xxx	xxx		xxx
260	Property Taxes	xxx	xxx	xxx	64-61-00					Miles of Road
261	State Income Taxes	xxx	xxx	xxx	556			xxx		Direct

Line No.	Account Name (1)	Account Number: Salaries and Wages (2)	Materials and Supplies (3)	Purchased Services (4)	General (5)	Total Cols. (2)-(5) (6)	Directed Traffic: Direct (7)	Common Apportioned (8)	Total Cols. (7)+(8) (9)	Suggested Apportionment Factors (10)
262	Other Taxes Except on Corporate Income or Payrolls	xxx	xxx	xxx	65-61-00					Miles of Road
263	TOTAL TAXES - Ls. 260,261,262	xxx	xxx	xxx			xxx	xxx		xxx
264	Miscellaneous Income Charges	xxx	xxx	xxx	551			xxx		Direct
265	TOTAL - Expenses, Rents & Taxes Sum of Ls. 259, 263, and 264						xxx	xxx		xxx
	Revenues									
266	Freight (Account 101)	xxx	xxx	xxx	xxx		xxx	xxx		Actual
267	All Other	xxx	xxx	xxx	xxx		xxx	xxx		Actual
268	Total Revenues - Ls. 266 and 267	xxx	xxx	xxx	xxx		xxx	xxx		xxx
269	Local/State Subsidies	xxx	xxx	xxx	xxx		xxx	xxx		Actual
270	TOTAL INCOME - Ls. 268 & 269	xxx	xxx	xxx	xxx		xxx	xxx		xxx
271	TOTAL EXPENSES OVER INCOME - L. 265 less 270	xxx	xxx	xxx	xxx		xxx	xxx		xxx
	Computation of Reimbursement									
272	Allowance for profit, L. 268 multiplied by .06 1/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
273	Working Capital 2/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
274	Section 1126.3 Funding Received	xxx	xxx	xxx	xxx		xxx	xxx		xxx
275	Total deficiency plus working capital minus S. 1126.3 Funding Received - L. 271 plus L. 273 minus L. 274	xxx	xxx	xxx	xxx		xxx	xxx		xxx
276	Amount borrowed 3/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
277	Interest allowed 4/	xxx	xxx	xxx	xxx		xxx	xxx		xxx
278	Total expenses plus profit plus interest - Ls. 265, 272 and 277	xxx	xxx	xxx	xxx		xxx	xxx		xxx
279	Reimbursement including an allowance for profit less S. 1126.3 funding received - L. 278 minus L. 270 minus L. 274 5/	xxx	xxx	xxx	xxx		xxx	xxx		xxx

ATTENTION

Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable by up to five years imprisonment and fines of up to $10,000 for each offense. (See 18 U.S.C. 1001, 1003, 287.)

Each person by whom this document is signed certifies that the representations appearing herein and in the appendices attached hereto (including any accompanying schedules and statements) are, to the best of his knowlege and belief, true, correct, and complete, based upon all the information required to be included therein, of which he has any knowledge.

Dated this —— day of ————, 19——

————————————
(Signature of Accounting Officer)

By————————————

————————————
(Title)

§ 1126.3 Optional Cash Funding Procedures.

(a) The directed carrier may elect to obtain cash funding from the Commission following the procedure set forth below. The funding procedure is separated into three phases. The first is designed to meet the directed carrier's immediate requirements to institute service. The second is an interim accounting and adjustment under which any serious cash flow problems will be remedied. The third phase is the final accounting after completion of the service and computation of the total account reimbursable.

All reports filed should refer to the appropriate ICC account numbers. The records of the directed carrier relating to the directed service will be subject to continuing audit by the Commission.

(b) *Initial Funding.* (1) The initial funding is intended to cover the immediate deficit to be incurred through cash expenditures that must be made before compensating revenues can be generated. Permissible costs which might require lead funding include:

(i) Payroll costs necessary for assignment of crews;

(ii) Immediate maintenance of way or line repairs necessary to make a line operational or in compliance with safety standards;

(iii) Fuel and supplies;

(iv) Immediate rental or maintenance costs for equipment to be used (other than rental payments to the defaulting carrier);

(v) That portion of overhead allocable to developing the initial operation plan; and

(vi) Any other immediate cash requirements.

(2) To enable the Commission to determine initial cash requirements, the directed carrier is required to submit the following items.

(i) A brief description of its initial operating plan for the directed service, outlining the frequency and schedule of service planned, the personnel and equipment to be utilized, the crew change and interchange points to be observed, any immediate maintenance and repair work required, and its fuel and supply needs.

(ii) A statement of its immediate cash requirements, with any supporting evidence deemed necessary.

(iii) A statement of the forecasted costs and revenues attributable to the directed service for the 60 day period with appropriate explanatory notes.

These are to be submitted as soon as possible, but not later than 15 days after the issuance of the directed service order. After the Commission has determined the initial cash requirements (and within 30 days after the directed carrier's submission), it will certify to the Treasury Department that this amount is immediately payable.

(c) *Interim Accounting.* The interim accounting procedure consists of a report filed by the directed carrier at the end of each 30 day period following institution of the directed service. In addition, the carrier may file a report whenever it is experiencing severe cash flow difficulties and desires additional interim funding. The interim reports must contain:

(1) A statement of any revisions to the operating plan.

(2) An unaudited cash flow statement for the period since its last report, and an explanation of any requests for additional cash.

(3) An unaudited statement of costs and revenues attributable to the directed service since its institution, and

a statement of the forecasted costs and revenues for the remainder of the directed service period.

Within 30 days after receipt of an interim financing request with supporting data, the Commission will certify to the Treasury Department the amount to be paid the directed carrier.

(d) *Final Accounting.* (1) The final accounting report, to be filed within 180 days after completion of the directed service, should conform to the requirements of Section 1126.2 of this part. Any monies paid under the optional cash funding procedures must be deducted from the amount to be reimbursed (line 279). Also, the base for computation of allowable interest (line 277) must be reduced by the amount paid.

(2) After auditing the claim, the Commission will determine the allowable reimbursement. It will certify to the Treasury Department that the directed carrier be paid that amount by which the allowable reimbursement exceeds the amount paid. Should the amount paid exceed the allowable reimbursement, the difference will be due and payable by the directed carrier to the Commission within 30 days. It not paid within the 30-day period, the amount due will then begin to accrue interest at the prevailing prime rate.

PART 1127—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

Sec.

1127.1 Definitions.
1127.2 Purpose and scope.
1127.3 Subsidy agreement.
1127.4 Interpretations of the Standards.
1127.5 Access to records, audit and inspection.
1127.6 Revenues attributable to commuter rail service.
1127.7 Avoidable costs of providing service.
1127.8 Valuation of rail properties.
1127.9 Reasonable return on the value of the properties.
1127.10 Additional rail passenger service.

APPENDIX I—SUBSIDY ESTIMATE
APPENDIX II—FINANCIAL STATUS REPORT
APPENDIX III—SPEED FACTORED GROSS TONS FORMULA (SFGT)

AUTHORITY: Sec. 205(d)(5)(A) and (6) of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by section 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57; Pub. L. 95-473, 92 Stat. 1355 (49 U.S.C. 10362).

Source: 44 FR 16411, Mar. 19, 1979, unless otherwise noted.

§ 1127.1 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

"Account" means an account in the ICC's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

"3R Act" means the Regional Rail Reorganization Act of 1973 (Public Law 93-236 (45 U.S.C. 701 *et. seq.*)) as amended by the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210 (90 Stat. 31 *et. seq.*)) and the Local Rail Service Assistance Act of 1978 (Pub. L. 95-607 (92 Stat. 3059 *et. seq.*)).

"Actual" means charges for rail facilities, properties and services which are directly identified with commuter service excluding those costs which are apportioned under § 1127.7 (f). Such charges shall be included in the proper account whether incurred by the subsidizer or the railroad.

"Amtrak" means the National Railroad Passenger Corporation.

"Base costs" means all costs that are specifically related to a rail property and/or facility, except those costs which could be avoided if the minority user(s) service(s) were not present.

"Base period" means a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available.

"Common Costs" means charges for rail facilities, properties and services in the designated area which are not solely for the benefit of a particular user. Such charges shall be included in the proper account.

"Commuter service" means the specific service for which the subsidizer has offered or agreed to make continuation payments.

"Conrail" means the Consolidated Rail Corporation.

"Designated area" means a portion of the rail facilities such as track seg-

ments, buildings and yards, for which costs are collected and apportioned between commuter and other services. A designated area may extend beyond or outside the commuter service area.

"Dominant user" means the person, railroad, State, or local or regional transportation authority who is the owner of a rail property and/or facility.

"Facilities Utilization Plan" means a document identifying and itemizing the road and equipment properties used in providing commuter passenger service.

"Form R-1" means the railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

"ICC" means Interstate Commerce Commission.

"Manpower Utilization Plan" means a document identifying the labor forces used in providing commuter passenger service.

"Minority user" means a user other than the dominant user of a rail property and/or facility on an incremental (use) basis.

"4R Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31 *et. seq.*).

"Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), including Conrail and Amtrak.

"RSPO" means the Rail Services Planning Office of the ICC.

"Secretary" means the Secretary of Transportation or his designated representative.

"Standards" means 49 CFR Part 1127 Standards for Determining Commuter Rail Service Continuation Subsidies.

"Subsidizer" means a State or a local or regional transportation authority which offers to make or makes a payment to continue commuter rail service pursuant to sections 304(c) and 304(e) of the 3R Act as amended.

"Subsidy period" means the term for which a subsidy agreement has been negotiated and is in operation.

"XX" means that where this notation precedes the last four digits of an account number (e.g. XX-16-02), all accounts with identical last four digits (e.g. 11-16-02, 21-16-02, 41-16-02 and 61-16-02) are to be included.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980]

§ 1127.2 Purpose and scope.

(a) Section 304(e)(1), as amended, of the 3R Act requires Conrail (or a profitable railroad) to provide commuter rail service for a period of 180 days commencing April 1, 1976, on all rail properties over which a railroad in reorganization in the Northeast and Midwest Region, or a person leased, operated, or controlled by such a railroad, was providing service as of that date regardless of whether or not the properties were designated in the Final System Plan of the United States Railway Association as rail properties over which rail service is required to be operated.

(b) Section 304(c)(2)(A) and section 304(e)(4) of the 3R Act, as amended, provide that no commuter rail service may be discontinued, and no rail properties may be abandoned, if a subsidizer offers financial assistance in the form of a rail service continuation payment which is designed to cover the difference between the avoidable costs of providing commuter rail service on the rail properties and the revenues attributable to such properties, together with a reasonable return on the value of the properties.

(c) Section 205(d)(6) of the 3R Act, as amended, authorizes RSPO to determine and publish Standards for defining (1) the "revenue attributable to the rail properties", (2) the "avoidable cost of providing service", and (3) a "reasonable return on value", as those phrases are used in section 304 of the 3R Act, as amended.

(d) Section 205(d)(5) of the 3R Act, as amended, directs RSPO to determine and publish Standards for the computation of subsidies for commuter rail service (except passenger service compensation disputes subject to the jurisdiction of the ICC) which are consistent with the compensation principles described in the Final System Plan and which avoid cross

subsidization among commuter, intercity, and freight rail services.

(e) These regulations set forth a method for establishing an estimated subsidy payment, which will enable a prospective subsidizer to formulate a subsidy offer within the context of section 304 of the 3R Act, as amended, and provide a basis for subsidy payment pending the negotiation of a subsidy agreement. When an agreement is concluded, subsequent payments shall be based on the negotiated subsidy. The final payment shall be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in the subsidy period.

(f) Section 304(e)(4)(C) of the 3R Act, as amended, provides that the Commuter Standards published as 49 CFR Part 1127, Standards For Determining Commuter Rail Service Continuation Subsidies under section 205(d) (5)(A) and (6) of the 3R Act, as amended, shall apply to rail passenger service provided under an agreement or lease pursuant to sections 303(b)(2) or 304(c)(2)(B) of the 3R Act, as amended, when an offer is made for the continuation of rail passenger service beyond the period required by such agreement or lease.

§ 1127.3 Subsidy agreement.

(a) *Notice of Intention.* A prospective subsidizer shall notify the railroad of its intention to offer financial assistance for the continuation of commuter service no later than 40 days before the offer is to be tendered. The Notice shall specify:

(1) All modifications in the fares to be charged and in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify;

(2) The length of the subsidy period; and

(3) The name and address of the prospective subsidizer.

A copy of the Notice shall be served concurrently on RSPO and the Secretary.

(b) *Subsidy Estimate.* The railroad shall compute a subsidy estimate predicated on the information contained in the Notice and the revenues attributable, avoidable costs of providing service, and reasonable return on value for the based period in accordance with the methodology prescribed in §§ 1127.6 through 1127.9 and in the format specified in Appendix I to this part. The estimate shall be adjusted as necessary to allow for any actual or projected variations in service, e.g. seasonal fluctuations in traffic or extraordinary events affecting service levels. The bases of any adjustments shall be stated with particularity. The railroad's estimate and the general terms it proposes for an agreement shall be served on the prospective subsidizer (with copies to RSPO and the Secretary) as soon as possible but not later than 30 days after the Notice is received.

(c) *Offer of Financial Assistance.* The prospective subsidizer must formulate an offer of subsidy predicated on the railroad's estimate, but may propose modifications which are consistent with these Standards. Subsidy offers must be served on the railroad (with copies to RSPO and the Secretary) not less than 60 days before the end of the subsidy period. The offer shall contain:

(1) A subsidy estimate in the form prescribed in Appendix I to this part;

(2) A resolution, authorization or other evidence that the prospective subsidizer has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize the service;

(3) Information demonstrating that the prospective subsidizer has, or within a reasonable time will have, the financial resources to subsidize the service and otherwise fulfill its contractual obligations; and

(4) A subsidy payment for the first month of service.

(d) *Negotiations*—(1) *General.* The railroad and the prospective subsidizer shall negotiate an initial subsidy agreement as soon as possible. The parties may agree in arm's-length negotiations to provisions which modify the Standards, subject to review of such modifications by RSPO. RSPO would not expect to disapprove variations from the Standards which are the product of arm's-length negotia-

tions and which are shown to be reasonable in the light of the pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with RSPO for its review.

(2) *Significant Use.* Unless the parties agree otherwise, the subsidizer shall be deemed a significant user of the rail properties in the areas designated on the facilities utilization plan, and shall be assigned the directly identifiable and common costs, including base costs as applicable, of providing the commuter passenger service.

(3) *Insignificant Use.* A minority user, who is proposing incidential use of rail properties in the designated area, may be assigned the directly identifiable costs incurred in providing the service, plus an allowance for overhead as negotiated by the parties. If the parties are unable to agree on an overhead allowance, the methodology for apportioning common costs specified in § 1127.7 shall apply.

(4) *Mediation.* Upon request of either party, RSPO will mediate disagreements concerning the facilities utilization plan, the manpower utilization plan, the subsidy agreement and the application of these Standards.

(e) *Subsidy Payments.* The subsidizer shall make subsidy payments monthly in advance, based either upon the negotiated estimate, or in the absence of a subsidy agreement, upon the subsidizer's offer of financial assistance. The payment shall be determined by dividing the total subsidy by the number of months in the subsidy period. Interest on overdue subsidy payments shall accrue, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, for such period as they remain unpaid and the railroad has not terminated the service. The final subsidy payment shall be adjusted retroactively within 60 days of the filing of the final Financial Status Report required by paragraph (f) of this section to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in providing rail commuter service during the subsidy period. The railroad shall establish a system to collect the data necessary to make the adjustment. If the subsidizer is entitled to a refund, the railroad shall pay interest on the overpayment, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, accruing from the end of the subsidy period until the refund is made.

(f) *Financial Status Report.* The railroad shall submit to the subsidizer and RSPO a Financial Status Report in the form prescribed in Appendix II to this part within 60 days after the end of each three months of the subsidy period. Significant deviations from the subsidy estimate must be explained. Unless the parties otherwise agree, the second-to-last report shall be the basis for negotiating the subsequent subsidy agreement. The final report shall be the basis of the subsidy payment adjustment.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980]

§ 1127.4 Interpretations of the Standards.

Parties desiring an interpretation of the Standards should file a written petition citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner should identify those parties and serve each of them with a copy. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. RSPO will issue an interpretation, unless it concludes that the matter raised requires amendment of the Standards, in which case RSPO will institute a rulemaking proceeding.

§ 1127.5 Access to records, audit and inspection.

(a) The subsidizer, RSPO, Conrail and the Secretary of Transportation shall have reasonable access to the records, accounts, working papers, and other documents and to the properties and equipment of any railroad or subsidizer which provides commuter passenger service or whose properties and equipment are used in providing commuter passenger service for the following purposes:

(1) To verify the accuracy and completeness of the subsidy estimate, the facilities utilization plan, the manpower utilization plan, and the Financial Status Reports;

(2) To audit the actual revenues attributable, costs incurred and service units maintained during the subsidy period;

(3) To inspect the properties and equipment used in providing the commuter passenger service and to measure the performance of the railroad under the offer of financial assistance and the subsidy agreement; or

(b) The properties and records described in paragraph (a) shall be made available for inspection and examination by the subsidizer, RSPO, Conrail or the Secretary of Transportation during regular business hours at a time and place mutually agreeable to the parties. The railroad or the subsidizer shall also reproduce such records, providing the requesting party pays the reasonable cost thereof.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980]

§ 1127.6 Revenues attributable to commuter rail service.

The revenues attributable to commuter rail service shall be the total of the revenues, rentals and allowances assigned in accordance with this section. Where a third party controls revenues or rents attributable to the commuter service, the railroad shall credit the commuter service with the amounts of such revenues or rents credited to it by the third party, and shall use its best efforts to negotiate equitable apportionments. Revenues attributable to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. The revenues, rentals and allowances assigned shall be derived from the following accounts.

(a) *Revenue Accounts.* (1) Account 101—Freight (Mail portion) *Account 102—Passenger; Account 103—Passenger Related; Account 104—Switching; Account 105—Water Transfers.* The revenues assigned to these accounts shall be the actual revenues attributable to commuter service that are directly identified with the operation of commuter trains, excluding rail service continuation payments.

(2) *Account 110—Incidental.* The revenues assigned to this account earned on commuter trains shall be credited directly to the commuter service. The commuter service portion of revenues generated at fixed facilities used in common with other services shall be determined from the relative passenger on-off counts (including pass riders) at those facilities. Special studies of on-off counts may be substituted for continuous records of such counts where desired. Any amounts included in this account from the sale of electric current or power shall be assigned to commuter service in accordance with § 1127.7(f)(3)(v) if related to train operations and (§ 1127.7(f)(3)(ix)) if related to yard operations.

(3) *Account 121—Joint facility—Cr.; Account 122—Joint facility—Dr.* To the extent that the terms of joint facility agreements yield apportionments of revenues to commuter services, the amounts so yielded shall be credited or debited directly to the commuter service. If the terms of the agreements do not yield such apportionments, passenger on-off counts (including pass riders) shall be the basis of apportionment at joint facilities where passengers are boarded or discharged; and at other facilities counts of cars handled as developed from special studies or continuous records shall be the basis of apportionment.

(b) *Rentals—Account 510—Miscellaneous rent income.* The rentals assigned to this account which are attributable to commuter service shall be the actual amount derived from the rental of commuter service equipment or other property including property owned by the subsidizer, Conrail, Amtrak or other parties.

(c) *Pass Rider Allowance.* Attributable revenues of the commuter service shall be credited with an allowance for passengers using passes or reduced fare tickets issued by the railroad (or predecessor companies). The parties may continue existing practices for crediting such allowances. In the absence of an agreement, the amount of such credit shall be determined on the basis of currently applicable fares

charged revenue commuter passengers.

(d) *Conversion Chart for Revenue Accounts.*

Revenue account title	Previous account number	Present account number
Freight (Mail portion)	101	101
Passenger	102	102
Passenger Related	103, 104, 105, 108, 131.	103
Switching	110	104
Water Transfers	113	105
Incidental	132, 133, 138, 141, 142, 143.	110
Joint Facility-Cr	151	121
Joint Facility-Dr	152	122
Miscellaneous Rent Income	510	510

§ 1127.7 Avoidable costs of providing service.

(a) *Assignment of costs.* To the maximum extent practicable, the directly identifiable and common costs for each designated area shall be developed from a facilities utilization plan and a manpower utilization plan. The base costs shall be assigned to the dominant user. The facilities and manpower utilization plans, developed on the basis of dominant and minority user(s), are to be completed with the assistance of available and appropriate cost and accounting records such as time sheets, material requisitions, charge cards, vouchers, and the like. [All accounts shall be separated between labor and material (non-labor) charges.] Otherwise, costs may be assigned to the minority service in a manner agreed to by the parties. The parties may rely on historical data; conduct special studies; develop their own apportionment formulae based on use; or agree on a combination of these methods. Upon request of either party, RSPO will mediate disputes concerning the proper methodology for assigning costs. Any costs which are not assigned under the foregoing procedure shall be assigned in accordance with the methodology prescribed in subsection (e) and (f) below, subject to the condition that either party may request a special study. The requesting party will be responsible for designing the study and obtaining the other party's approval of the design. The results of the study will be binding on both parties unless they mutually agree to disregard the results. Where commuter service is not the dominant user the avoidable costs common to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. In assigning costs to the minority user(s) it is understood that the amounts charged to a particular function shall include both the directly attributable expenses and the minority user's portion of the common expenses for that function. Also, the assignment of common costs associated with some supervision of overhead functions that relate to both dominant user and minority user(s) activities requires the inclusion of the applicable dominant user account in the apportionment base.

(b) *Facilities Utilization Plan.* The parties shall develop a facilities utilization plan which shall identify the dominant and minority user(s). The facilities utilization plan shall identify and itemize the road and equipment properties used by the minority user(s) and assign to each property or group of properties the agreed percentage of use devoted to the minority user(s). In the event that there is only one service being operated, the facilities utilization plan shall identify only those properties used and useful to that service. The plan shall identify those road properties which are avoidable upon discontinuance of the minority user(s) service for the purposes of determining road depreciation, retirement and dismantling charges [§ 1127.7 (e)-(f)] and value of road properties [§ 1127.8 (b) and (c)]. The roadway properties and facilities should be divided into areas or segments consisting of stretches of property where operations or use remain fairly constant and pinpointing those places where the operations or use change (e.g., number of tracks change, diverging or entering branch lines and other similar changes). Properties and equipment normally covered in a facilities utilization plan include: trackage; signal system; electrification system; interlocking plants; bridges and drawbridges; stations and platforms; rail-

highway crossings; yards; power plants; shops; enginehouses and servicing facilities; storehouses; land; rolling stock; and other facilities or equipment. Source data normally include equipment rosters, track diagrams or maps of the properties in the above categories, and usage measures for each class of facility and equipment by specific facility or segment (e.g., track density charts, trains sheets, timetables, blocking records, yarding programs, station workloads, etc.) to determine the percentage of use of facilities or equipment in providing the minority service(s).

(c) *Manpower Utilization Plan.* The parties shall also develop a manpower utilization plan separated between designated areas in which the commuter authority is the dominant user and designated areas in which the commuter authority is the minority user. Where the commuter service is the dominant user, the plan shall identify the labor forces used in providing both the commuter service and any minority service(s). The plan shall list all persons employed according to job title, work location, account and percentage of time devoted to dominant and minority service(s) duties. Where the commuter service is the minority user the plan shall identify the labor forces used in providing the commuter service. The plan shall list the persons employed according to the job title, work location, account and percentage of time devoted to commuter service duties.

(d) *Special studies.* All special studies shall be conducted jointly by the railroad and the subsidizer. The length and frequency of the studies and the standardized measurement procedures utilized in the studies shall be negotiated by the parties. In the event of impasse, either party may submit the dispute to RSPO for resolution and its decision shall be final. The cost of studies which are prescribed by these Standards or which the parties voluntarily agree to perform shall be attributed to the commuter service. The cost of studies performed at the request of only one party shall be borne exclusively by that party and shall not be attributed to the commuter service.

(e) *Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.*

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(1) MAINTENANCE OF WAY AND STRUCTURES			
ADMINISTRATION			
Track	201	XX-16-02 XX-19-02	Various accounts (1127.7(f)(1)(ix)).
Bridges and buildings	201	XX-16-03 XX-19-03	Various accounts (1127.7(f)(1)(x)).
Signals	201	XX-16-04 XX-19-04	Various accounts (1127.7(f)(1)(xi)).
Communications	201	XX-16-05 XX-19-05	Various accounts (1127.7(f)(1)(xiv)).
Other	201	XX-16-06 XX-19-06	Various accounts (1127.7)(f)(1)(xii)).
REPAIR AND MAINTENANCE			
Running			
Roadway	202	XX-14-10 XX-17-10	Speed factored gross tons SFGT (1127.7(f)(1)(ii)).
Tunnels and subways	206	XX-14-11 XX-17-11	Do.
Bridges and culverts	208, 210	XX-14-12 XX-17-12	Do.
Ties	212	21-14-13 21-17-13	Do.
Rails	214	21-14-14 21-17-14	Do.
Other track material	216	21-14-15 21-17-15	Speed factored gross tons SFGT (1127.7(f)(1)(a)
Ballast	218	21-14-16 21-17-16	Do.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
REPAIR AND MAINTENANCE			
Running—Continued			
Track laying and surfacing	220	XX-14-17 XX-17-17	Do.
Road property damaged	202-220	XX-14-48 XX-17-48	Do.
Highway grade crossings	273	XX-14-22 XX-17-22	Do.
Switching			
Roadway	202	XX-15-10 XX-18-10	Cars dispatched (1127.7)(f)(1)(i)).
Tunnels and subways	206	XX-15-11 XX-18-11	Do.
Bridges and culverts	208, 210	XX-15-12 XX-18-12	Do.
Ties	212	21-15-13 21-18-13	Do.
Rails	214	21-15-14 21-18-14	Do.
Other track material	216	21-15-15 21-18-15	Do.
Ballast	218	21-15-16 21-18-16	Do.
Track laying and surfacing	220	XX-15-17 XX-18-17	Do.
Road property damaged	202-220	XX-15-48 XX-18-48	Do.
Highway grade crossings	273	XX-15-22 XX-18-22	Do.
Station and office buildings	227	XX-16-23 XX-19-23	Square feet and passenger—on-off count (1127.7(f)(1)(iii)).
Road property damaged—other	221-265	XX-16-48 XX-19-48	Repair and maintenance—running plus switching (1127.7(f)(1)(viii)).
Signals and interlockers	249		
Running		XX-14-19 XX-17-19	Train movements (1127.7(f)(1)(iv)).
Switching		XX-15-19 XX-18-19	Actual.
Communications system	247	XX-16-20 XX-19-20	Various accounts (1127.7(f)(1)(xiii)).
Power systems	253, 257	XX-16-21 XX-19-21	Kilowatt hours (1127.7(f)(1)(v)).
Shop buildings	235, 253, 257		
Locomotives		XX-16-24 XX-19-24	Labor charges (1127.7(f)(1)(vi)). Do.
Other equipment		XX-16-26 XX-19-26	
Locomotives servicing facilities	231, 233	XX-16-27 XX-19-27	Unit miles, fuel dispensed (1127.7(f)(1)(vii)).
Miscellaneous buildings and structures	221, 229 239, 265	XX-16-28 XX-19-28	Repair and maintenance—running plus switching (1127.7(f)(1)(viii)).
Roadway machines	269	XX-16-36 XX-19-36	Do.
Small tools and supplies	271	XX-16-37 XX-19-37	Do.
Snow removal	272	XX-16-38 XX-19-38	Do.
Dismantling retired road property	270, 306		Actual. See footnote 2.
Running		XX-14-39 XX-17-39	See footnote 2.
Switching		XX-15-39 XX-18-39	Actual. See footnote 2.
Other		XX-16-39 XX-19-39	Actual. See footnote 2.
Fringe benefits	277, 457		
Running		12-14-00 12-17-00	Various accounts (1127.7(f)(1)(xvi)).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
SWITCHING—Continued			
Switching		12-15-00	Do.
		12-18-00	
Other		12-16-00	Do.
		12-19-00	
Casualties and insurance	274, 275		
Running		52-14-00	Various accounts (1127.7(f)(1)(xv)).
		52-17-00	
		53-14-00	
		53-17-00	
Switching		52-15-00	Do.
		52-18-00	
		53-15-00	
		53-18-00	
Other		52-16-00	Do.
		52-19-00	
		53-16-00	
		53-19-00	
Lease rentals—Dr	542		
Running		31-14-00	Actual.
		31-17-00	
Switching		31-15-00	Do.
		31-18-00	
Other		31-16-00	Do.
		31-19-00	
Lease rentals—Cr	509		
Running		32-14-00	Do.
		32-17-00	
Switching		32-15-00	Do.
		32-18-00	
Other		32-16-00	Do.
		32-19-00	
Joint facility rents—Dr	541		
Running		33-14-00	Agreement or passenger on-off count
		33-17-00	(1127.6(a)(3))
Switching		33-15-00	Do.
		33-18-00	
Other		33-16-00	Do.
		33-19-00	
Joint facility rents—Cr	508		
Running		34-14-00	Do.
		34-17-00	
Switching		34-15-00	Do.
		34-18-00	
Other		34-16-00	Do.
		34-19-00	
Other rents—Dr	543		
Running		35-14-00	Actual.
		35-17-00	
Switching		35-15-00	Do.
		35-18-00	
Other		35-16-00	Do.
		35-19-00	
Other rents—Cr	510		
Running		36-14-00	Do.
		36-17-00	
Switching		36-15-00	Do.
		36-18-00	
Other		36-16-00	Do.
		36-19-00	
Depreciation	266		
Running		62-14-00	Actual—restricted to properties identified in
		62-17-00	section (1127.8(b)). See footnote 2.
Switching		62-15-00	Do.
		62-18-00	
Other	305	62-16-00	Do. See footnote 3.
		62-19-00	See footnote 3.
Joint facility—Dr	278		
Running		37-14-00	Agreement or passenger on-off count
		37-17-00	(1127.6(a)(3)).
Switching		37-15-00	Agreement or passenger on-off count
		37-18-00	(1127.6(a)(3)).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
SWITCHING—Continued			
Other		37-16-00 37-19-00	Do.
Joint facility—Cr	279		
Running		38-14-00 38-17-00	Do.
Switching		38-15-00 38-18-00	Do.
Other		38-16-00 38-19-00	Do.
Other	267, 274, 281, 282		
Running		XX-14-99 XX-17-99	Various accounts (1127.7(f)(1)(xv)) (any amounts in this category which were charged to previous account No. 267 shall be assigned on an actual basis). See footnote 2.
Switching		XX-15-99 XX-18-99	See footnote 2. See footnote 2.
Other		XX-16-99 XX-19-99	See footnote 2.
(2) EQUIPMENT LOCOMOTIVES			
Administration	301	XX-24-01 XX-26-01	Various accounts (1127.7(f)(2)(ii)).
Repair and maintenance	311	XX-24-41 XX-26-41	Special study and actual (1127.7(f)(2)(i)).
Machinery repair	302	XX-24-40 XX-26-40	Various accounts (1127.7(f)(2)(ii)).
Equipment damaged	311	XX-24-48 XX-26-48	Special study and actual (1127.7(f)(2)(i)).
Dismantling retired property	306, 329	XX-24-39 XX-26-39	Actual. See footnote 3.
Fringe benefits	335, 457	12-24-00 12-26-00	Various accounts (1127.7(f)(2)(iii)).
Other casualties and insurance	332, 333	52-24-00 52-26-00	Various accounts (1127.7(f)(2)(ii)).
		53-24-00 53-26-00	Do.
Lease rentals—Dr	537	31-24-00 31-26-00	Actual.
Lease rentals—Cr	504	32-24-00 32-26-00	Do.
Other rents—Dr	537	35-24-00 35-26-00	Do.
Other rents—Cr	504	36-24-00 36-26-00	Do.
Depreciation	331	62-24-00 62-26-00	Do.
Joint facility—Dr	336	37-24-00 37-26-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	337	38-24-00 38-26-00	Do.
Repairs billed to others—Cr.:			
Machinery	302	40-24-00 40-26-40	Actual.
Locomotives	311	40-24-41 40-26-41	Do.
Road property and equipment damaged	311, 317, 318, 323, 326, 328	40-24-48 40-26-48	Do.
Other	332, 339	XX-24-99 XX-26-99	Various accounts (1127.7(f)(2)(ii)).
OTHER EQUIPMENT			
Administration	301	XX-25-01 XX-27-01	Various accounts (1127.7(f)(2)(v)).
Passenger and other revenue equipment	317	XX-25-45 XX-27-45	Actual.
Computers and data processing systems	Various accounts	XX-25-46 XX-27-46	Do.
Machinery	302	XX-25-40 XX-27-40	Various accounts (1127.7(f)(2)(v)).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
OTHER EQUIPMENT—Continued			
Work and other non-revenue equipment	326, 328	XX-25-47 XX-27-47	Various accounts (1127.7(f)(2)(iv)).
Equipment damaged	317, 318, 323, 326, 328	XX-25-48 XX-27-48	Actual.
Dismantling retired property	306, 329	XX-25-39 XX-27-39	Do.[3] See footnote 3.
Fringe benefits	335, 457	12-25-00 12-27-00	Various accounts (1127.7(f)(2)(vi)).
Other casualties and insurance	332, 333	52-25-00 52-27-00 53-25-00 53-27-00	Various accounts (1127.7(f)(2)(v)). Do.
Lease rentals—Dr	538	31-25-00 31-27-00	Actual.
Lease rentals—Cr	505	32-25-00 32-27-00	Do.
Joint facility rents—Dr	541	33-25-00 33-27-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility rents—Cr	508	34-25-00 34-27-00	Do.
Other rents—Dr	538	35-25-00 35-27-00	Actual.
Other rents—Cr	505	36-25-00 36-27-00	Do.
Depreciation	331	62-25-00 62-27-00	Do.
Joint facility—Dr	336	37-25-00 37-27-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	337	38-25-00 38-27-00	Do.
Repairs billed to others—Cr. passenger and other revenue equipment.	317	40-25-45 40-27-45	Actual.
Computer and data processing equipment	([5])	40-25-46 40-27-46	Do.
Work and other nonrevenue equipment	326, 328	40-25-47 40-27-47	Various accounts (1127.7(f)(2)(iv)).
Road property and equipment damaged	317, 318, 323, 326, 328	40-25-48 40-27-48	Actual.
Other	330, 332, 339	XX-25-99 XX-27-99	Actual/various accounts (1127.7(f) (2)(vii)).
(3) TRANSPORTATION TRAIN OPERATIONS			
Administration	371	XX-41-01 XX-51-01	Various accounts (1127.7(f)(3)(xi)).
Engine crews	392, 402	XX-41-56 XX-51-56	Actual, cars dispatched (1127.7(f)(3)(i)).
Train crews	401, 402, 403	XX-41-57 XX-51-57	Do.
Dispatching trains	372	XX-41-58 XX-51-58	Train hours (1127.7(f)(3)(ii)).
Operating signals and interlockers	404	XX-41-59 XX-51-59	Train movements (1127.7(f)(3)(iii)).
Operating drawbridges	406	XX-41-60 XX-51-60	Do.
Highway crossing protection	405	XX-41-61 XX-51-61	Do.
Train inspection and lubrication	311, 402	XX-41-62 XX-51-62	Cars dispatched (1127.7(f)(3)(iv)).
Locomotive fuel	394	XX-41-67 XX-51-67	Actual.
Electric power purchased/produced for motive power.	395, 396, 445	XX-41-68 XX-51-68	Actual-weighted (1127.7(f)(3)(v)).
Servicing locomotives	400	XX-41-69 XX-51-69	Locomotive units (1127.7(f)(3)(vi)).
Freight lost or damaged—solely related	418, 419	51-41-00 51-51-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Clearing wrecks	415	XX-41-63 XX-51-63	Do.
Fringe benefits	409, 457	12-41-00 12-51-00	Various accounts (1127.7(f)(3)(viii)).

FOOTNOTES

* Assign engine and train crew expenses direct to carrier's own traffic and directed traffic. Apportion common expenses on the basis of direct assignments to Accounts 11-31-56 and 11-31-57.

1/ Profit is based on 6% of total revenues (line 268). A profit from actual operations above 6% of total revenues may be retained by the directed carrier and no amount for profit will be paid by the Federal Government. Should a profit of less than 6% be earned, the difference between 6% and that % will be paid.

2/ Total expenses in line 265 divided by the total days of the directed operation. Multiply these expenses by a factor of 15 (days) to represent the lag between cash receipts and cash payments.

3/ The amount borrowed should not exceed the permissible limits established in the Ex Parte No. 293 (Sub No. 3) report, unless specifically approved by the Commission.

4/ Apply the average prime rate (per annum) in effect at New York City to line 275, or the prime rate (per annum) in effect at New York City on the date of the loan agreement to line 276, whichever is greater. However, the interest allowed on amounts actually borrowed shall not exceed the amount of interest charged on the loan, if less than the applicable prime rate.

5/ If amount on Line 279 is less than zero, any amount up to the funded amount will be due and payable to the Commission within 30 days. If not paid within the 30-day period the amount due will begin to accrue interest at the average prime rate (per annum) in effect at New York City.

NOTE: If directed service is passenger service use passenger account numbers anywhere applicable. For accounts 11-25-45, 21-25-45, 39/40/41-25-45, 61-25-45, 11-25-48, 21-25-48, 39/40/41-25-48, 61-25-48, 32-25-00, 36-25-00, 31-25-00, and 35-25-00, include in Maintenance of Equipment total and apportion common expenses on the basis of Passenger Train Car-Miles. For accounts 11-41-01, 21-41-01, 41-41-01, 61-41-01, 11-41-57, 21-41-57, 41-41-57, 61-41-57, 11-45-76, 21-45-76, 41-45-76, 61-45-76, 11-41-99, 21-41-99, 41-41-99, and 61-41-99, include in Transportation total and apportion common expenses on the basis of Passenger Train Car-Miles. Include account 102 and all other passenger related revenues with total revenues.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(3) TRANSPORTATION TRAIN OPERATIONS —Continued			
Other casualties and insurance	414, 416, 417, 420	52-41-00 52-51-00 53-41-00 53-51-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	412	37-41-00 37-51-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	413	38-41-00 38-51-00	Do.
Other	402, 403, 411, 420, 441	XX-41-99 XX-51-99	Actual.
YARD OPERATIONS			
Administration	371	XX-42-01 XX-52-01	Various accounts (1127.7(f)(3)(xi)).
Switch crews	378, 380, 389	XX-42-64 XX-52-64	Unit hours, special study (1127.7(f)(3)(ix)).
Controlling operations	377, 389	XX-42-65 XX-52-65	Do.
Yard and terminal clerical	377, 389	XX-42-66 XX-52-66	Do.
Operating switches, signals, retarders, and humps.	379, 389	XX-42-59 XX-52-59	Do.
Locomotive fuel	382	XX-42-67 XX-52-67	Do.
Electric power purchased/produced for motive power.	383, 384, 445	XX-42-68 XX-52-68	Do.
Servicing locomotives	388	XX-42-69 XX-52-69	Do.
Freight lost or damaged solely related	418, 419	51-42-00 51-52-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Clearing wrecks	415	XX-42-63 XX-52-63	Do.
Fringe benefits	409, 457	12-42-00 12-52-00	Various accounts (1127.7(f)(3)(viii)).
Other casualties and insurance	414, 416, 420	52-42-00 52-52-00 53-42-00 53-52-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	390, 412	37-42-00 37-52-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	391, 413	38-42-00 38-52-00	Do.
Other	411, 420	XX-42-99 XX-52-99	Actual.
TRAIN AND YARD OPERATIONS COMMON			
Cleaning car interiors	402	XX-43-70 XX-53-70	Do.
Freight lost or damaged—all other	418, 419	51-43-00 51-53-00	Responsibility/reserve account (1127.7(f)(3)(vii))
Fringe benefits	409	12-43-00 12-53-00	Various accounts (1127.7(f)(3)(viii)).
ADMINISTRATIVE SUPPORT OPERATIONS			
Administration	371	XX-45-01 XX-55-01	Various accounts (1127.7(f)(3)(xi)).
Employees performing clerical and accounting functions.	373, 376	XX-45-76 XX-55-76	Various accounts (1127.7(f)(3)(x)).
Communication systems operations	373, 376, 407	XX-45-77 XX-55-77	Administrative accounts (1127.7(f)(3)(xii)).
Loss and damage claims processing	418, 419	XX-45-78 XX-55-78	Responsibility/reserve account (1127.7(f)(3)(vii)).
Fringe benefits	409, 457	12-45-00 12-55-00	Various accounts (1127.7(f)(3)(viii)).
Casualties and insurance	414, 416, 420	52-45-00 52-55-00 53-45-00 53-55-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	412, 447	37-45-00 37-55-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	413, 448	38-45-00 38-55-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
ADMINISTRATIVE SUPPORT OPERATIONS —Continued			
Other	411, 420	XX-45-99 XX-55-99	Actual.
(4) GENERAL AND ADMINISTRATIVE			
Officers—General Superintendence	351, 451, 452, 453	XX-62-01 XX-63-01	Actual.[1]
Accounting, auditing and finance	451, 452	XX-62-86 XX-63-86	Actual.[1]
Management services and data processing	451, 452	XX-62-87 XX-63-87	Do.
Marketing	352	XX-62-88 XX-63-88	Do.
Sales	352	XX-62-89 XX-63-89	Do.
Personnel and labor relations	451, 452	XX-62-91 XX-63-91	Do.
Legal and secretarial	274, 332, 420, 452, 454	XX-62-92 XX-63-92	Do.
Public relations and advertising	353, 354	XX-62-93 XX-63-93	Do.
Research and Development	(5)	XX-62-94 XX-63-94	Do.
Other	351, 360, 451, 452, 453, 460	XX-62-99 XX-63-99	Do.
Casualties and insurance	357, 455	52-62-00 52-63-00 53-62-00 53-63-00	Do.
Writedown of uncollectible accounts	Various Accounts	63-62-00 63-63-00	Do.
Fringe benefits	359, 456, 457	12-62-00 12-63-00	Various accounts (1127.7(f)(4)).
Property taxes	532	64-62-00 64-63-00	Actual—as determined under section 1127.8(b). See footnote 4.
Other taxes except on corporate income or payrolls.	532	65-62-00 65-63-00	Actual.
Joint facility—Dr	461	37-62-00 37-63-00	Agreement or passenger on-off count (1127.6)(a)(3)).
Joint facility—Cr	462	38-62-00 38-63-00	Do.

[1] These costs may include the actual expenses incurred in administering the subsidy program. There shall be no apportionment of common costs charged to these accounts.

[2] In those situations where the commuter service is the dominant user, the minority user(s) shall be assigned any charges to these accounts on an actual basis.

[3] The minority user(s) shall pay for units of shop and powerplant machinery which could be disposed of if the minority service were discontinued.

[4] On line segments which are owned by a state, local or regional transportation authority, the minority user(s) shall be charged with those property taxes including in lieu of tax payments which would not be incurred in the absence of the minority service(s).

[5] Various accounts.

(f) *Apportionment Rules For Assigning Common Costs to Commuter Service.* The accounts specified under § 1127.7(e) which have an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(1) *Maintenance of Way and Structures*—(i) *Repair and Maintenance-Switching.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service cars dispatched in the designated area to the total cars dispatched in the designated area.

(ii) *Repair and Maintenance—Running.* For a designated area, the common costs assigned to these accounts shall be apportioned on the ratio of the commuter service Speed Factored Gross Tons (SFGT) for the designated area to the total SFGT for all traffic in the designated area. Where the commuter service is the minority user, the commuter service SFGT shall be derived by subtracting the SFGT for freight and/or intercity passenger from the total SFGT for all traffic. Where the commuter service is the dominant user, the commuter service SFGT shall be derived as if the commuter service was the only service; the SFGT shall be calculated in ac-

cordance with the formula set forth in Appendix III.

(iii) *Station and Office Buildings.* The common costs assigned to these accounts shall be first apportioned on the ratio of total square feet devoted to passenger service to the total square feet used in the facility. The passenger portion shall then be apportioned on the ratio of the commuter service on-off passenger count (including pass riders) in the designated area to the total on-off passenger count (including pass riders) in the designated area.

(iv) *Signals and Interlockers.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(v) *Power Systems.* The common costs assigned to these accounts shall be apportioned on the ratio of the kilowatt hours consumed by the commuter service to the total kilowatt hours consumed by all services in the designated area.

(vi) *Shop Buildings.* The common costs assigned to these accounts shall be apportioned on the ratio of the labor charges expended servicing commuter service equipment in the designated area to the railroad's total labor charges expended servicing all equipment in the designated area.

(vii) *Locomotive Servicing Facilities.* The common costs assigned to fuel stations shall be kept separate from the common costs assigned to the balance of the locomotive servicing facilities. The common costs assigned to fuel stations shall be apportioned on the ratio of the amount of fuel dispensed in commuter service to the total amount of fuel dispensed for all services using these facilities. The common costs assigned to the balance of the locomotive servicing facilities shall be apportioned on the ratio of the locomotive unit miles (diesel and electric) generated from commuter service using these facilities in the designated area to the railroad's total locomotive unit miles in the designated area (diesel and electric) for all services.

(viii) *Road Property Damaged—Other; Miscellaneous Buildings and Structures.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-10	XX-14-10	XX-17-10
XX-12-10	XX-15-10	XX-18-10
XX-11-11	XX-14-11	XX-17-11
XX-12-11	XX-15-11	XX-18-11
XX-11-12	XX-14-12	XX-17-12
XX-12-12	XX-15-12	XX-18-12
21-11-13	21-14-13	21-17-13
21-12-13	21-15-13	21-18-13
21-11-14	21-14-14	21-17-14
21-12-14	21-15-14	21-18-14
21-11-15	21-14-15	21-17-15
21-12-15	21-15-15	21-18-15
21-11-16	21-14-16	21-17-16
21-12-16	21-15-16	21-18-16
XX-11-17	XX-14-17	XX-17-17
XX-12-17	XX-15-17	XX-18-17
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48

(ix) *Administration—Track.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-10	XX-14-10	XX-17-10
XX-12-10	XX-15-10	XX-18-10
XX-11-11	XX-14-11	XX-17-11
XX-12-11	XX-15-11	XX-18-11
21-11-13	21-14-13	21-17-13
21-12-13	21-15-13	21-18-13
21-11-14	21-14-14	21-17-14
21-12-14	21-15-14	21-18-14
21-11-15	21-14-15	21-17-15
21-12-15	21-15-15	21-18-15
21-11-16	21-14-16	21-17-16
21-12-16	21-15-16	21-18-16
XX-11-17	XX-14-17	XX-17-17
XX-12-17	XX-15-17	XX-18-17
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48
XX-11-22	XX-14-22	XX-17-22
XX-12-22	XX-15-22	XX-18-22
XX-13-36	XX-16-36	XX-19-36
XX-13-37	XX-16-37	XX-19-37
XX-13-38	XX-16-38	XX-19-38
XX-11-39	XX-14-39	XX-17-39
XX-12-39	XX-15-39	XX-18-39
XX-13-39	XX-16-39	XX-19-39
XX-13-21	XX-16-21	XX-19-21

(x) *Administration—Bridges and Buildings.* The common cost assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-12	XX-14-12	XX-17-12
XX-12-12	XX-15-12	XX-18-12

XX-13-23	XX-16-23	XX-19-23
XX-13-24	XX-16-24	XX-19-24
XX-13-25		
XX-13-26	XX-16-26	XX-19-26
XX-13-27	XX-16-27	XX-19-27
XX-13-28	XX-16-28	XX-19-28
XX-13-29		
XX-13-30		
XX-13-31		
XX-13-32		
XX-13-33		
XX-13-35		
XX-13-48	XX-16-48	XX-19-48
XX-11-48	XX-14-48	XX-17-48
XX-12-48	XX-15-48	XX-18-48

(xi) *Administration—Signals.* The common costs assigned to these accounts shall be apportioned on the ratio of amounts in accounts XX-11-19, XX-12-19, XX-14-19, XX-15-19, XX-17-19, XX-18-19, assigned to commuter service to the railroad's total in these accounts for the designated area.

(xii) *Administration—Other.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts in all of the accounts under § 1127.7(e)(1) assigned to commuter service (excluding accounts XX-13-20, XX-16-20, XX-19-20, 12-11-00, 12-12-00, 12-13-00, 12-14-00, 12-15-00, 12-16-00, 12-17-00, 12-18-00, 12-19-00 all rentals accounts, joint facility accounts, fringe benefits accounts, casualties and insurance accounts and depreciation accounts) to the railroad's total for all accounts (freight, passenger, common) under maintenance of way and structures in the designated area.

(xiii) *Communications Systems.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-13-02	XX-16-02	XX-19-02
XX-13-03	XX-16-03	XX-19-03
XX-13-04	XX-16-04	XX-19-04
XX-13-06	XX-16-06	XX-19-06
XX-32-65	XX-42-65	XX-52-65
XX-32-66	XX-42-66	XX-52-66
XX-21-01	XX-24-01	XX-26-01
XX-22-01		
XX-23-01	XX-25-01	XX-27-01
XX-31-01	XX-41-01	XX-51-01
XX-32-01	XX-42-01	XX-52-01
XX-33-01	XX-43-01	XX-53-01
XX-34-01		
XX-35-01	XX-45-01	XX-55-01
XX-61-01	XX-62-01	XX-63-01
XX-31-58	XX-41-58	XX-51-58

(xiv) *Administration—Communications.* The common costs assigned to these accounts shall be apportioned on the ratio of amounts in the following accounts: XX-13-20, XX-16-20, XX-19-20 assigned to commuter service to the railroad's total in these accounts for the designated area.

(xv) *Casualties and Insurance; Other.* The common costs assigned to these accounts shall be apportioned, separated between running, switching and other, on the ratio of the amounts in all of the accounts under § 1127.7 (e)(1) assigned to commuter service (excluding accounts 12-11-00, 12-12-00, 12-13-00, 12-14-00, 12-15-00, 12-16-00, 12-17-00, 12-18-00, 12-19-00, all rental accounts, joint facility accounts and depreciation accounts) to the railroad's total in these accounts for the designated area.

(xvi) *Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(2) *Equipment—Locomotives*—(i) *Repair and Maintenance; Equipment Damaged.* These accounts shall be separated between yard and other (road) with a further separation between diesel and other (electric). The common costs assigned to these accounts for yard locomotives shall be based on the results of the special study described in § 1127.7 (f)(3)(ix). The costs assigned to these accounts for other locomotives (road) shall be the actual costs that are directly attributable to commuter service.

(ii) *Administration; Machinery Repairs; Other Casualties and Insurance; Other.* The common costs assigned to these accounts shall be apportioned on

the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-21-39	XX-24-39	XX-26-39
XX-21-41	XX-24-41	XX-26-41
XX-21-48	XX-24-48	XX-26-48
37-21-00	37-24-00	37-26-00
38-21-00	38-24-00	38-26-00

(iii) *Fringe Benefits—Locomotives.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

Other Equipment—(iv) *Work and Other Non-Revenue Equipment.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in the repair and maintenance running and switching accounts, identified in § 1127.7(f)(1)(viii) to the railroad's total for these accounts in the designated area.

(v) *Administration; Machinery; Other Casualties and Insurance.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to the railroad's total in the designated area for the following accounts:

XX-23-43		
XX-23-44		
XX-23-45	XX-25-45	XX-27-45
XX-23-46	XX-25-46	XX-27-46
XX-23-47	XX-25-47	XX-27-47
XX-23-48	XX-25-48	XX-27-48
37-23-00	37-25-00	37-27-00
38-23-00	38-25-00	38-27-00
XX-23-39	XX-25-39	XX-27-39
XX-22-42		

(vi) *Fringe Benefits—Other Equipment.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefits costs where it can be clearly demonstrated that the cost was commuter service related.

(vii) *Other.* Equipment retirements shall be assigned to commuter service on an actual basis. The balance of the common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-23-43		
XX-23-44		
XX-23-45	XX-25-45	XX-27-45
XX-23-46	XX-25-46	XX-27-46
XX-23-47	XX-25-47	XX-27-47
XX-23-48	XX-25-48	XX-27-48
37-23-00	37-25-00	37-27-00
38-23-00	38-25-00	38-27-00
XX-23-39	XX-25-39	XX-27-39
XX-22-42		

(3) *Transportation*—(i) *Engine Crews; Train Crews.* These accounts shall be separated between salary and wages and train supplies and expenses. The salary and wage portion shall be assigned to commuter service on an actual basis. The common costs assigned to these accounts for train supplies and expenses shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(ii) *Dispatching trains.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter train hours in the designated area to the total train hours in the designated area.

(iii) *Operating Signals and Interlockers; Operating Drawbridges; Highway Crossing Protection.* The common costs assigned to these accounts shall

be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(iv) *Train Inspection and Lubrication.* The common costs assigned to these accounts shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(v) *Electric Power Purchased/Produced for Motive Power.* The cost of kilowatt hours consumed for commuter service shall be based on the kilowatt hours developed for commuter service in § 1127.7(f)(1)(v) weighed to reflect the peak period power demands, i.e., time of day and volume of power demanded. A special study may be conducted to develop the peak power demand factor.

(vi) *Servicing Locomotives.* The common costs assigned to these accounts shall be apportioned on the ratio of the total locomotive units (road) serviced in commuter service in the designated area to the railroad's total locomotive units (road) serviced in the designated area.

(vii) *Freight Lost or Damaged—Solely Related; Clearing Wrecks; Other Casualties and Insurance.* The minority user shall be responsible for any costs incurred under these accounts resulting from the operation of the minority service. The dominant user is responsible only for those costs incurred under these accounts resulting from an incident that solely involves the operation of the dominant service. The railroad shall, if the subsidizer agrees, establish a reserve for the purpose of holding the subsidizer harmless from any liabilities under these accounts arising out of the operation of commuter services. Where the commuter service is the minority user, the costs assigned to these accounts for commuter service insurance shall be determined by ascertaining from the railroad's underwriters: (A) The difference in the current premium if commuter service were not operated and (B) the additional premium required to hold the railroad and the subsidizers harmless from any liability. Such amounts shall be apportioned between the several commuter services operated by the railroad either on the basis of the relative passenger-miles (including pass riders) or on the basis of the relative passenger revenues (including pass rider allowances). Where the commuter service is the dominant user, the costs assigned to these accounts for commuter service insurance shall be determined by ascertaining from the railroad's underwriters the premium if the commuter service were operated as the sole user of the properties involved.

(viii) *Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facility for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(ix) *Switch Crews; Controlling Operations; Yard and Terminal Clerical: Operating Switches, Signals, Retarders, and Humps; Locomotive Fuel; Electric Power Purchased/Produced For Motive Power; Servicing Locomotives.* A special study shall be conducted to determine the ratio of the commuter service (diesel, electric) yard locomotive unit hours in the designated area to the railroad's total (diesel, electric) yard locomotive unit hours in the designated area. The common costs assigned to these accounts shall be the amounts in the railroad's accounts for the designated area multiplied by the ratio determined from the study. For this purpose, the term "*locomotive*" shall include motor cars. In conducting such a study, the railroad should recognize the variances of: (A) Weekend versus weekday demand; (B) required yard crew manning to perform the switching services for various

users; and (C) the effect of peak service on yard manning.

(x) *Employees Performing Clerical and Accounting Functions; Communication System Operations.* (A) The common costs assigned to these accounts, exclusive of material, shall be subdivided into 4 categories: (*1*) Ticket sales and service; (*2*) other station costs; (*3*) station master; and (*4*) mail and baggage.

(B) The common costs in these subaccounts, exclusive of material, shall be apportioned on the ratio of commuter service units in the designated area to the total units in the designated area for the respective units: (*1*) Weighted ticket sales; (*2*) passenger on-off count (including pass riders); (*3*) trains stopping at stations in the designated area; and (*4*) units of mail and baggage handled. The common material costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in these accounts exclusive of material determined above to the railroad's total for these accounts in the designated area.

(xi) *Administration.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in all other transportation accounts in each subcategory except Fringe Benefits and Communication Systems Operations to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(xii) *Communication System Operations.* The common costs assigned to these accounts shall be apportioned on the ratio of the total commuter service amounts in the Administration accounts section (§ 1127.7(f)(3)(xi)) assigned to commuter service to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(4) *General and Administrative—Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(g) *Performance Standards—Penalties and Incentives.* The subsidy agreements may include reasonable provisions as agreed by the parties for penalties for service inferior to stipulated performance standards and incentive payments for superior performance. Penalties withheld from subsidy payments by the subsidizer under such agreements shall be treated as reductions of avoidable costs and incentive payments shall be treated as additions to avoidable costs.

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§ 1127.8 Valuation of rail properties.

The value of rail properties on which a reasonable return is allowed shall consist of:

(a) The net book value of equipment furnished by the contracting carrier for commuter service, after deduction of accrued depreciation; and

(b) The value of rail properties on which a reasonable return is allowed when the commuter service is the minority user shall consist of the net book value of those roadway and structures properties which are used in commuter service and could be disposed of if the commuter service were discontinued. The net book value shall include the net liquidation value of the properties as of April 1, 1976, determined for their highest and best use for other than rail transportation purposes, plus the value of additions and betterments completed after that date for commuter service. From this amount is subtracted any depreciation accrued from that date and all costs of modifying remaining properties so that non-commuter operations can be continued over them. It shall not include the value of properties owned by

public bodies; or of properties owned by the trustees of debtor estates if such properties are entitled to a return computed under 49 CFR 1125.9;

(c) When the commuter service is the dominant user, it shall be entitled to a return on the values of properties and equipment which could be disposed of if the minority service(s) were discontinued. The value applied to each line segment shall be the acquisition price paid by the commuter authority to Conrail, plus the value of additions and betterments after acquisition for the minority service, less depreciation accrued from the time of acquisition. From this amount is subtracted all costs of modifying remaining properties so that commuter operations can be continued over them.

(d) If the book values of road or equipment property are adjusted upward or downward as a result of final orders of the special court, such adjusted values shall be reflected in future subsidy payments, but without retroactive effect.

[45 FR 47, Jan. 2, 1980]

§ 1127.9 Reasonable return on the value of the properties.

The reasonable return shall be 7.5 percent per annum on the sum of the appropriate elements of the investment base computed in accordance with § 1127.8. When the commuter authority is the owner, the 7.5 percent per annum return represents a charge to the other user(s).

[45 FR 47, Jan. 2, 1980]

§ 1127.10 Additional rail passenger service.

(a) As used in this section, the term "additional rail passenger service" means rail passenger service other than rail passenger service provided pursuant to sections 304(e) (2) and (4) of the 3R Act, as amended. It includes extended or expanded service and modified routings, which is to be provided over rail properties conveyed to Conrail pursuant to Section 303(b)(1) of the 3R Act, as amended, or over rail properties contiguous to properties conveyed to Amtrak, or any other rail properties contiguous to properties to which a State (or local or regional transportation authority) has obtained access.

(b) If a State (or a local or regional transportation authority in the region offers to provide payment for the provision of additional rail passenger service, Conrail shall undertake to provide the additional service consistent with the discontinuance provisions contained in section 304(e)(2) of the 3R Act, as amended.

(c) An offer to provide payment for the provision of additional rail service shall be made in accordance with section 304(c)(2)(A) of the 3R Act, as amended, and pursuant to §§ 1127.6-1127.9 of these regulations. The offer shall be designed to avoid any additional costs to Conrail arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification.

(d) The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties other than those designated for conveyance to Amtrak pursuant to section 206(c)(1)(C) and 206(c)(1)(D) of the 3R Act, as amended, and to Conrail pursuant to section 303(b)(1) of the 3R Act, as amended, necessary to provide the additional rail passenger service. The State shall also demonstrate that it has completed or will complete prior to the inception of the additional rail passenger service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail service, including rail freight service. Assurance is required that the additional service will not detract from the level and quality of existing rail passenger and freight service.

(e) Conrail shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

Appendix I—Subsidy Estimate.

The following information is required to be furnished under § 1127.3(b) in accordance

with the methodology set forth in §§ 1127.3 through 1127.9. The base period data shall be shown for each item.

REVENUES ATTRIBUTABLE FOR BASE PERIOD

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment
6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
a. Book Value of Equipment
b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on value (line 11 times line 12)

ESTIMATED SUBSIDY PAYMENT

14. Subsidy Estimate (line 3 minus lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Estimated Emergency Operating Assistance from the Secretary (line 14 minus line 15)

TRAFFIC AND OPERATING DATA

1. Numbers of Passengers Carried
2. Total Car Miles

Appendix II—Financial Status Report

A railroad entering into a subsidy agreement shall compile the information prescribed below in accordance with the standards set forth in §§ 1127.3 through 1127.9. The actual data for the period to date and a projection to the end of the subsidy period shall be shown for each item.

REVENUES ATTRIBUTABLE FOR ACTUAL AND PROJECTED

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment
6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
a. Book Value of Equipment
b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on Value (line 11 times line 12)

SUBSIDY PAYMENT

14. Subsidy Payment (line 3 minus lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Emergency Operating Assistance from the Secretary (line 14 minus 15)

TRAFFIC AND OPERATING DATA

1. Number of Passengers Carried
2. Total Car Miles

Appendix III—Speed Factored Gross Tons Formula (SFGT)

The following formula is required to calculate the SFGT to be used under § 1127.7(f)(1)(B) of this part.

All Track and Roadbed Maintenance:

$$SFGT = Y(.670 + .910\ N) + N\left[1.840 + .870\sqrt{GT} + .058\ GTF + .029\ GTP + .048\ J\left[GTF\ (1 + \frac{VF}{600} + \frac{(VF)^2}{6000}) + GTP\ (1 + \frac{VP}{750} + \frac{(VP)^2}{9375})\right]\right]$$

or in cases where freight speeds are equal to or greater than 80 percent of passenger speeds, the freight and passengers terms may be combined as shown below.

$$SFGT = Y(.670 + .910\ N) + N\left[1.840 + .870\sqrt{GT} + .058\ GTF + .029\ GTP + .048\ J\left[GT\ (1 + \frac{V}{600} + \frac{V^2}{6000})\right]\right]$$

where:
GT=Total gross tons of traffic (in millions) per track mile per year.
GTF=Freight traffic gross tons (in millions) per track mile per year.
GTP=Passenger traffic gross tons (in millions) per track mile per year.
N=Number of tracks per route mile.[1]
V=Speed factor (the larger of freight speed or 0.8 times passenger speed).
VF=Freight speed.
VP=Passenger speed.
J=1 for welded rail.
1.5 for bolted rail.

[Y=As shown below]

FRA class of tracks and type of operation	Value of Y		
	Main line	Branch line	Yard and switch
Class 1, 2, 3; freight only up to MGT per mile per year	1.00	0.56	0.14
Class 1, 3; passenger, or Class 1, 2, 3; freight more than 10 MGT per mile per year	1.12	0.66	.....
Class 3; passenger, or Class 4, 5, 6; all traffic	1.15	0.69	.....

[1]In calculating total SFGT, the value of N shall reflect the total number of tracks presently in place. Any tracks constituting present excess capacity shall be included in this value of N.

Where the commuter authority is the minority user the value of N, used in a calculating SFGT for freight and/or intercity passenger service, shall reflect the total number of tracks less the number of tracks (if any) which could be eliminated if commuter service were discontinued. Any tracks constituting present excess capacity shall be included in the value of N when computing SFGT for freight and/or intercity passenger.

Where the commuter authority is the dominant user, the value of N shall reflect the total number of tracks less the number of tracks (if any) which could be eliminated if freight and/or intercity passenger service were discontinued. Any track's constituting present excess capacity shall be included in the value of N when computing SFGT for commuter service.

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 47, Jan. 2, 1980]

CROSS REFERENCE: See also Rule 247 of the Special Rules of Practice (§ 1100.247 of this chapter).

PART 1128—FEEDER RAILROAD DEVELOPMENT PROGRAM

Sec.
1128.1 Purpose and scope.
1128.2 Notice of intent to purchase.
1128.3 Application to purchase.
1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the owning carrier's system diagram map.
1128.5 Procedures for handling an application seeking a finding of public convenience and necessity.
1128.6 Commission order.
1128.7 Acquisition cost.
1128.8 Copies

AUTHORITY: 5 U.S.C. 553; 49 U.S.C. 10910.

SOURCE: 46 FR 35654, July 10, 1981, unless otherwise noted.

§ 1128.1 Purpose and scope.

Under 49 U.S.C. 10910, the Commission can require the sale of certain rail lines to a financially responsible person. To be eligible for such sale, either the line must appear in category 1 or 2 of the owning railroad's System Diagram Map (but the railroad has not filed an application to abandon it), or the public convenience and necessity, as specifically defined in Section 10910, must permit or require the sale of the line. Furthermore, until October 1, 1983, section 10910 is only applicable to lines that carried less than three million gross ton miles of traffic per mile in the preceding calendar year. The term three million gross ton miles, as used in these regulations, shall be calculated by adding the ton miles of the cargo and the ton miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the

gross ton miles, only those related to the portion of the line segment being purchased shall be included. This part sets forth the regulations and procedures to carry out the provisions of this program.

§ 1128.2 Notice of intent to purchase.

(a) A financially responsible person who wishes to acquire a rail line pursuant to these procedures shall, at least 90 days prior to applying to the Commission for such purpose, notify the following persons or entities of its intent to purchase a line of railroad: The Interstate Commerce Commission; the Designated State Agency in the State(s) in which the property is located; the owning railroad; all significant users of rail services located on the line; and the Railway Labor Executives' Association, 400 1st Street, N.W., Washington, D.C. 20001. As used in this part, the term "financially responsible person" can include: A shipper or group of shippers; a State, local or regional government or transportation authority; a Class III railroad; or any other entity (except a Class I or II railroad or an entity affiliated with a Class I or II railroad). "Significant user" means (1) each of the 10 rail patrons who originated and/or received the largest number of carloads on the line (or each patron if there are fewer than 10), and (2) any other rail patron who originated and/or received 50 or more carloads on the line proposed for acquisition during the 12-month period preceding the month in which the Notice is filed.

(b) The Notice shall contain the following information: The docket number, the identity of the applicant, and identification of the properties that the applicant wishes to purchase; a statement of the basis upon which the line is eligible for this program (including (1) applicable tonnage and (2) system diagram map designation or service deficiency allegations directed to the public convenience and necessity test); the applicant's reasons for wishing to acquire the properties; and preliminary evidence of the applicant's financial responsibility. Additionally, the Notice must contain a summary of the essential terms to be contained in the application, including an estimate of the net liquidation value of the property (with appraisal, if available), and an indication that the acquiring party is prepared to offer at least that amount to the owning railroad. It should specifically state any preconditions to service which the applicant would impose and the extent of the exemption from Title 49 provisions which the applicant would elect. The Notice shall also state that any interested party may submit comments or recommendations to the Commission with respect to the Notice and application, and that other interested and financially responsible persons may also propose to acquire the property. The Notice shall also name the applicant's representative to whom inquiries and requests for applications may be made.

(c) Before notice is given, the applicant must obtain a docket number from the Commission's Section of Finance. The Notice shall be served by certified mail on each party identified in paragraph (a) of this section, and shall be posted in each station on the line and published in a local newspaper at least once a week for three consecutive weeks. An affidavit shall be filed stating that the service requirements of this paragraph have been met. The Commission will publish a summary of the Notice in the FEDERAL REGISTER. If an applicant wishes to publish in a local newspaper a summary of the Notice, the applicant must include in the summary the name and address of applicant's representative to whom interested parties may request a copy of the full Notice.

§ 1128.3 Application to purchase.

(a) Not less than 90 days after filing the Notice required in § 1128.2 of these regulations, the party wishing to acquire the line may file an application with the Commission for the purchase of the rail properties described in the Notice. All applications filed under these regulations, whether they are initial applications or competing applications, must be served upon the persons or entities listed in § 1128.2(a) of these regulations and made available to interested parties upon request. All statements or information filed in sup-

port of or in opposition to the application shall be verified. The applicant shall pay the railroad the reasonable costs of providing data that would not otherwise be available or arrayed in the format desired. The railroad shall itemize by major category the expenses charged to the applicant such as xeroxing, labor costs associated with reproduction and assimilation of the data, and computer time.

(b) The Application shall contain the following information:

(1) The name and address of the proposed purchaser.

(2) The names and addresses of its officers and directors.

(3) A description of applicant's affiliation with any railroad.

(4) Information sufficient to establish that the applicant is a financially responsible person as defined in § 1128.2(a) of these regulations. Evidence of financial responsibility shall include, but not be limited to, balance sheets and *pro forma* income statements for at least three years and the identification of all sources of funds for acquisition and operation of the line (such as federal, state, shipper, and/or private contributions), including any loan commitments and/or dedication of funds for this proposal. In this regard, the applicant must demonstrate its ability: (i) To pay the higher of the net liquidation value or going concern value of the line; and (ii) to cover expenses associated with providing service over the line (such as, but not limited to, operating costs, rents, and taxes) for the first three years after acquisition of the line.

With regard to paragraph (b)(4)(i) of this section, estimates of net liquidation and going concern values, and complete descriptions of the methods by which such calculations were made, must be included. An appraisal by a qualified person of the net liquidation value of the line must also be included. In determining the value of the line, the amounts, if any, included for rights, such as mineral rights, licenses, and leases, shall be identified separately. If the purchase is to exclude these items, a statement to this effect shall be included.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (b)(4).

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have entered into with the proposed operator; describes in detail the service that is to be provided on the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least three years from the date of acquisition.

(8) A description of the extent of the applicant's and the operator's liability insurance. If trackage rights are requested, the insurance shall be at a level sufficient to indemnify the owning railroad against all personal and property damages that result from negligence on the part of the operator in exercising the trackage rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers on order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Commission approval. (THIS STATEMENT WILL BE BINDING UPON THE APPLICANT IF THE APPLICATION IS APPROVED.)

(10) The name and address of any person(s) that will subsidize the operation of the line.

(11) A statement that the applicant has negotiated with the owning railroad for the purchase of the properties and a report on the status of those negotiations. The status report shall include, but not be limited to, a description of the negotiations (participants, dates of meetings, and progress), points of agreement, specific areas of disagreement, and general problems.

(12) A statement that the applicant will seek a finding by the Commission that public convenience and necessity (PC&N) permit or require the acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's System Diagram

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Map. If the latter, a copy of the relevant portion of the map must be attached to the application. If the applicant seeks a finding of PC&N from the Commission, then the application must contain evidence sufficient to permit the Commission to find that:

(i) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(ii) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(iii) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(iv) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(v) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

With regard to paragraph (b)(12) (i) of this section, the applicant's evidence shall detail the nature of the claimed service inadequacy, the specific complaints of shippers on the line, the type of service requested, the owning railroads' responses to those requests, and the time period involved.

With regard to paragraph (b)(12) (ii) of this section, the applicant should identify all significant users on the line, estimate the tonnage and carloads shipped or received by each, and submit statements by a majority of the users explaining why the present service is inadequate.

(13) A statement of the extent to which the applicant intends to elect exemption from any of the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(14) A description of any trackage rights required over the owning railroad that are needed to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including a full explanation of how the estimate was reached. The description of the trackage rights shall include, but not be limited to, the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of the tracks; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(15) A description of any joint rates and divisions agreements that must be established. The description(s) shall include, but not be limited to, the following information: The railroad(s) involved; the estimated revenues that will result from the division(s); and the total costs of operating the line segment purchased (including the trackage rights fees).

(16) The extent to which the owning railroad's employees who normally service the line will be used.

(17) If the application is filed before October 1, 1983, information sufficient to allow the Commission to determine that the line sought to be acquired carried less than three million gross ton miles of traffic per mile in the preceding calendar year.

(18) A statement of the applicable time period for filing comments and submitting competing applications, with the Commission's address where they should be filed.

(c) The Commission may, if it finds that the circumstances of the application suggest a pattern of litigation that constitutes unfair harassment of the owning railroad, issue an order requiring applicant to show cause why the application should not be summarily dismissed.

§ 1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the owning carrier's system diagram map.

Only applications seeking to acquire a line contained in category 1 or 2 of the owning carrier's System Diagram Map shall be subject to the following procedures:

(a) The Commission shall accept or reject an application with respect to its completeness within 15 days of its receipt.

(b) The railroad and other interested parties wishing to comment shall file within 30 days of the filing date of the application their verified statements commenting on the application.

(c) Verified reply statements shall be filed within 20 days after comments are received.

(d) Competing applications shall be filed within 30 days of the initial application's receipt. Parties have 30 days from the date competing applications are filed with the Commission to comment on them. All competing applications are subject to the same requirements imposed on initial applications in § 1128.3 of these regulations. Comments on competing applications shall be verified and indicate the order or preference between applications and the specific reasons for such preference.

(e) When the Commission finds that (1) the traffic level on the line sought to be acquired was less than three million gross ton miles of traffic per mile in the preceding calendar year (Note: This finding will *not* be required for applications filed after October 1, 1983); (2) the line is classified in category 1 or 2 of the owning railroad's System Diagram Map, and (3) the applicant is a "financially responsible person" as defined in § 1128.2(a) of these regulations, it shall issue an order requiring that the rail line involved be sold to the applicant, upon payment by the applicant of the Constitutional minimum value of the properties, established in accordance with § 1128.7 of these regulations.

§ 1128.5 Procedures for handling an application seeking a finding of public convenience and necessity.

Only applications seeking a public convenience and necessity finding shall be subject to the following procedures:

(a) The Commission shall accept or reject an application with respect to its completeness within 30 days of its receipt.

(b) The railroad and other interested parties wishing to comment shall file within 60 days of the filing date of the application their verified statements commenting on the application.

(c) Verified reply statements shall be filed no later than the 80th day after the filing date of the application.

(d) Competing applications shall be filed within 30 days of the initial application's receipt. Parties have 30 days from the date competing applications are filed with the Commission to comment. All competing applications are subject to the same requirements imposed on initial applications in § 1128.3 of these regulations. Comments on competing applications shall be verified and indicate the order of preference between applications and the specific reasons for such preference.

(e) The applicant shall bear the burden of proving the statutory criteria set forth in § 1128.3(b)(12). All evidence filed in support of these contentions shall be in the form of verified statements.

(f) If the Commission determines that the statements and the reply statements do not contain sufficient evidence to permit a decision on the merits, the Commission will set the proceeding for further oral or written hearing.

(g) If the Commission finds that the applicant has not successfully carried the burden of proof with respect to one or more of the statutory criteria, the Commission shall deny the application.

(h) If the Commission finds that the applicant has successfully carried the burden of proof with respect to each criteria, it shall order the properties covered by the application to be sold to the applicant upon payment by the

applicant of the Constitutional minimum value of these properties, established in accordance with § 1128.7 of these regulations.

§ 1128.6 Commission order.

(a) In Any Commission decision that orders a line to be sold, the Commission will also address any related issues raised in the application.

(b) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed to a price.

(c) If the application requires the Commission to set joint rates or divisions, the Commission shall do so, based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

§ 1128.7 Acquisition cost.

(a) If the applicant and the owning railroad agree between themselves on an acquisition price, that price shall be the final price and not subject to any of the requirements of this subpart.

(b) If the Commission has issued an order requiring the rail properties covered by an application to be sold to the applicant, and the owning railroad and the applicant cannot agree on a sale price, the Commission will, upon a request by the applicant, determine the value of the properties which shall not be less than the Constitutional minimum value, as that term is defined in 49 U.S.C. 10910(b)(1)(B).

The Commission may, upon request of either party, conduct an oral hearing to determine the value of the property.

(c) A request by the applicant that the Commission set the Constitutional minimum value of the properties to be sold shall be made within 60 days of the Commission's order requiring the properties to be sold, and must be accompanied by a statement by the applicant that it has attempted unsuccessfully to negotiate with the railroad during that period and describing the status of the negotiations.

(d) The Commission shall make available to the parties two separate procedures under which the Constitutional minimum value may be set. In its petition asking the Commission to set the Constitutional minimum value, the applicant must state its preferred method.

(1) If the applicant chooses to submit evidence sufficient to prove both the net liquidation value (NLV) and the going concern value (GCV) of the rail properties approved for sale, the following procedures shall apply:

(i) Applicant must submit information and evidence proving NLV and GCV with its petition asking the Commission to set the Constitutional minimum value.

(ii) The appraisal submitted with the application shall be a sufficient submission as to NLV, but must be broken into the constituent parts of NLV (for example, land, track, material, and facilities).

(iii) Applicant shall be free to submit whatever evidence it deems persuasive of GCV, and may seek to use the Commission's discovery procedures for information that is vital to applicant's case and is exclusively in the control of the owning railroad.

(iv) The owning railroad may submit evidence within 30 days of applicant's petition regarding NLV and GCV. If it wishes to challenge applicant's evidence of NLV, the railroad must submit an appraisal by a qualified appraiser that meets the requirements of paragraph (d)(1)(ii) of this section. If it wishes to challenge applicant's evidence of GCV, the railroad shall submit whatever evidence it deems persuasive. The term "qualified appraiser" as used in this subsection includes qualified railroad personnel whose primary job responsibilities include the valuing or appraising of land and other railroad assets.

(v) The Commission shall determine the acquisition cost based on the record of the proceedings, and such determination shall be final.

(vi) The applicant shall have 60 days (or whatever other period the parties

agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission or, within 30 days, notify the owning railroad of its decision not to acquire the line.

(2) As an alternative to the procedures in paragraph (d)(1) of this section the parties may choose final offer arbitration. This method, if selected, shall be binding on both parties, and the sale shall be consummated at the arbitrated price, unless both parties agree to withdraw from this option. If arbitration is not used, then the procedures in paragraph (d)(1) of this section will be followed. Under final offer arbitration, the following procedures shall apply:

(i) The applicant shall, in its petition asking the Commission to determine the Constitutional minimum value of the properties, state its selection of the arbitration option.

(ii) The petition must include a signed statement by the railroad agreeing to final offer arbitration as described in these regulations.

(iii) The applicant must certify in the petition that the applicant and the owning railroad have exchanged final offers for the purchase and sale of the properties.

(iv) The petition must include the same final offers the parties previously exchanged (unless they have both agreed to a modification) along with: (A) A statement by each that it believes the offer satisfies the Constitutional minimum value requirement of the Staggers Rail Act of 1980; (B) an explanation by each of the factors to which the difference between the two offers is attributable; and (C) an explanation by each of why its figure better meets the statutory requirements.

(v) The Commission shall select whichever of the two offers better meets the statutory requirement of Constitutional minimum value. The Commission will pick one of the two offers, and will not select a different amount.

(vi) The applicant shall have 60 days (or whatever other period the parties agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission, unless both parties agree to a withdrawal of the application.

§ 1128.8 Copies.

An original and 10 copies of an application, verified statement, comment or any other pleading required by these rules should be submitted to the Secretary, Interstate Commerce Commission, Washington, DC, 20423. The outside envelope and the first page of any document submitted under these rules should be clearly marked "Feeder Line Development."

PARTS 1130–1139—SPECIAL PROCEDURES—MOTOR CARRIERS AND BROKERS CERTIFICATES, PERMITS, LICENSES

PART 1130—[RESERVED]

PART 1131—TEMPORARY AUTHORITY APPLICATIONS UNDER SECTION 210a(a) OF THE INTERSTATE COMMERCE ACT

Sec.

1131.1 Controlling legislation and definitions.
1131.2 Filing of applications.
1131.3 Processing of applications.
1131.4 Determination of applications.
1131.5 Rates, fares, charges, and special permission applications.
1131.6 Petitions.
1131.7 State registration of temporary authorities.

AUTHORITY: 49 Stat. 560, 561, 52 Stat. 1237, 1238, 80 Stat. 378; 49 U.S.C. 317, 318, 304; 310a, 5 U.S.C. 553, 558.

SOURCE: 32 FR 20111, Dec. 20, 1967, unless otherwise noted.

NOTE: Rules governing extension of temporary operating authority or approvals are contained in Part 1101 of this chapter.

§ 1131.1 Controlling legislation and definitions.

(a) *Controlling legislation.* Section 210a(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 310a(a), which the rules and regulations in this part are designed to implement, provides as follows:

To enable the provision of service for which there is an immediate and urgent need to a point or points or

within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify but for not more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

Extensions of temporary authority beyond 180 days are governed by the special rules, contained in Part 1101 of this chapter, promulgated pursuant to section 558 of the Administrative Procedure Act, 5 U.S.C. 558.

(b) *Definitions.* As used in this part, the following words and terms are construed as follows:

(1) *"Temporary authority".* Limited-term motor carrier operating authority issued for periods up to 180 days (TA) pursuant to section 210a(a) of the Interstate Commerce Act to authorize transportation service for which there is an immediate and urgent need and which cannot be met by existing carrier service. This term includes "emergency temporary authority" issued for periods of 30 days or less (ETA) to meet an immediate and urgent need for service due to emergencies, in which time or circumstances do not reasonably permit the filing and processing of an application for temporary authority (TA).

(2) *"Common carrier by motor vehicle".* Same as defined in section 203 (a)(14) of the Interstate Commerce Act (49 U.S.C. 303(a)(14)).

(3) *"Contract carrier by motor vehicle."* Same as defined in section 203(a)(15) of the Interstate Commerce Act (49 U.S.C. 303(a)(15)).

(4) *"Aggregate of 180 days."* The total number of days of temporary authority which may be granted to a motor carrier of passengers under the provisions of 49 U.S.C. 10928(a). As used in this part, the term "a period of 180 days" or "aggregate of 180 days" or terms having a similar meaning will be construed to mean 270 days insofar as they apply to motor carriers of property and thus define the total number of days of temporary authority which may be granted to a motor carrier of property under the provisions of 49 U.S.C. 10928(b).

(5) *"Person".* Same as defined in section 203(a)(1) of the Interstate Commerce Act (49 U.S.C. 303(a)(1)).

[32 FR 20111, Dec. 20, 1967, as amended at 45 FR 45526, July 3, 1980]

§ 1131.2 Filing of applications.

(a) *General.* (1) All applications for temporary authority are to be filed at the Regional Office which has jurisdiction over the area in which applicant's headquarters are located. The Regional Office will review each application filed, after consultation with the affected field office or offices as appropriate, and then transmit the applications, with recommendations as to their disposition, to the Regional Motor Carrier Board.

(2) The Regional Offices will maintain records of authorized carriers with headquarters in their region and their operating authorities, and their staff members, as well as those of the field offices within their jurisdiction, will be available for: Consultation; giving assistance in obtaining motor carrier service; providing guidance in the preparation of temporary authority applications and related supporting material; and making rate, insurance, and other required filings. Regional and field Offices will furnish copies of necessary forms upon request.

(b) *How and where filed.* A separate application for each temporary authority sought shall be filed on Form OP-MCB-95 (§ 1003.1 of this chapter). The signed original and two copies of each application and all supporting documents shall be filed with the Regional Office which has jurisdiction over the point at which applicant is domiciled, or such other location as the Commission may designate in special circumstances. An applicant seeking temporary authority (but not *emergency* temporary authority) shall tender an original and two copies of a caption summary. Caption summaries shall be double spaced and shall follow the format used for permanent au-

thority notices, as described in *Revision of Application Forms,* 125 M.C.C. 790 (1976). Summaries shall incorporate the style changes noticed in the FEDERAL REGISTER issue of January 18, 1978 (43 FR 2632).

(c) *Supporting statements.* Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers. Each such shipper's statement must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service. Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of motor carrier who will provide services and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address and motor carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known.

(d) *Special procedures for filing applications for emergency temporary authority.* (1) Emergency temporary authority shall be applied for only where emergency conditions exist which do not permit sufficient time to afford the notice specified in § 1131.3(a). Applications for emergency temporary authority shall be filed on Form OP-MCB-95 (§ 1003.1 of this chapter).

(2) Where the emergency is found to continue beyond the period of the initial 30 day grant, the emergency temporary authority may be extended until disposition is made of the longer temporary authority application. In no event may a 30 day grant of emergency temporary authority of a motor carrier of property be extended for a period of more than 90 additional days.

(3) In the cases where the urgency of the situation warrants, the supporting statements of those having the immediate and urgent need for carrier service may be furnished by telegram. However, the telegram shall contain substantially the factual information which is more fully described in paragraph (c) of this section. The telegram shall be sent to the Regional Office that is handling the application.

(4) In processing emergency temporary authority applications, it may become necessary to use telephone service to verify rate levels. Government funds are not available to pay for these communication expenses. The applicant shall have or make arrangements with the telephone company so that costs can be charged to its account.

(e) *Insurance and service of process.* (1) Where the applicant is an author-

ized carrier, a statement must accompany the application indicating whether evidence of effective insurance is on file with the Commission and whether agents for service of process have been designated for each State in which operations are conducted or proposed. If applicant is not an authorized carrier, it should furnish a statement containing the name of its insurance company, its policy number, the effective and expiration dates of such policy, the limits contained therein, and a copy of the Commission's Form BOC 3 (§ 1003.1 of this chapter) designating an agent for service of process in each State where operations are proposed to be conducted. If such carrier does not have appropriate insurance it may submit a statement, which includes the name of its insurance company and of its intent to effect compliance before commencing operations if the authority is granted.

(2) On emergency temporary authorities where time does not permit the submission of the required written statement by applicant, a telegraphic statement may be accepted.

NOTE: General policy statement concerning motor carrier temporary authority procedures.

1. Applications for Emergency Temporary Authority

Applications for emergency temporary authority shall continue to be filed on form OP-MCB-95. Telegraphic or telephone filing shall also be acceptable in the manner now permitted, and the subsequent confirmation filing of such application shall be made by filing on form OP-MCB-95 with a shipper's supporting statement.

2. Applications for Extension of Emergency Temporary Authority

Applications seeking extension of emergency temporary authorities may be filed in two ways:

A. *If corresponding 180-day temporary authority application is filed within 15 days of the date of filing the initial emergency temporary authority application.* If an applicant for emergency temporary authority, using form OP-MCB-95 shall, within 15 days of the date of filing with the Regional Office for emergency temporary authority, file with the Regional Office a corresponding application seeking temporary authority for a period of 180 days, applicant may state on the emergency application form OP-MCB-95: "Applicant hereby certifies that within 15 days of the date of filing this application a corresponding application shall be filed seeking temporary authority for a period of 180 days, and requests that two successive extensions of any emergency temporary authority granted each for a period of 30 days be issued." An application for emergency temporary authority which contains this certification shall be accompanied by the fee applicable for two extensions, which presently is $20 and is not refundable. In the event emergency temporary authority is issued in the first instance it is not necessary to seek extensions pending determination of a 180-day temporary authority application, unless processing of the 180-day application exceeds 90 days. The filing of the 180-day application, within the 15-day period, will automatically serve to extend the former for two successive 30-day periods. The Commission reserves the authority to revoke any emergency temporary authority (or extension).

Should 180-day temporary authority be granted to an applicant, it will be effective upon the expiration of the emergency temporary authority, as extended. Should 180-day temporary authority be denied, the Commission's decision to that effect will revoke the outstanding emergency temporary authority as of a date certain, and require applicant to cancel its emergency temporary authority rate publication.

B. *If corresponding 180-day temporary authority application is not filed within 15 days of the date of filing the initial emergency temporary authority application.* Any request for extension of emergency temporary authority, not conforming to the rules in paragraph (A) above, shall be filed using form OP-TA-19. These requests shall be filed prior to the second day before the expiration date of the emergency temporary authority sought to be extended. The Regional Office shall require that any request for continuation of service authorized by the issuance of emergency temporary authority not filed prior to the second day be filed on form OP-MCB-95 as a separate application.

3. With Whom Filed

All applications for emergency temporary authority, requests for extension of emergency temporary authority, and applications for 180-day temporary authority shall be filed with the Regional Office which has jurisdiction over the point at which the applicant is domiciled, or such other location as the Commission may designate in special circumstances.

[32 FR 20111, Dec. 20, 1967, as amended at 34 FR 441, Jan. 11, 1969; 35 FR 17045, Nov. 5, 1970; 45 FR 3584, Jan. 18, 1980; 45 FR 45526, July 3, 1980]

EDITORIAL NOTE: For a document exempting applicants from part of the requirements of § 1131.2 (b), see 44 FR 8270, Feb. 9, 1979.

§ 1131.3 Processing of applications.

(a) *Notice to interested persons*—(1) *Service.* Notice of the filing of temporary authority applications shall be given by the publication of a summary of the authority sought in the FEDERAL REGISTER. Summaries shall be prepared by applicant in accordance with § 1131.2(b). These will be reviewed by the Commission's Regional Office and forwarded to the Office of the Secretary, Washington, DC. If an incorrect caption is filed, it shall be returned with the application to the applicant for correction. No summary will be published or need be submitted in the case of emergency temporary authority applications.

(2) *Filing of protests.* Any person who can and will provide all or any part of the proposed service may file a protest against the application. Protests shall be specific as to the service which protestant can and will offer and shall consist of a signed original and two (2) copies. They shall be filed with Regional Office named in the FEDERAL REGISTER publication within 15 calendar days after publication. One copy of a protest shall be served on the applicant (or its authorized representative, if any) by U.S. mail or in person.

(b) *Publication of rates and charges.* A carrier may not lawfully perform transportation under a grant of temporary authority unless and until compliance has been made with the rate and other requirements of section 217 of the Interstate Commerce Act in the case of common carriers and of section 218 of the act in the case of contract carriers, as provided in § 1131.5.

(c) *Revocation for noncompliance, and reinstatement and extension of time for making compliance.* (1) Temporary authority is approved subject to compliance within 30 days, or within such additional time as the Commission may approve, with the applicable provisions of the statute and the requirements, rules, and regulations prescribed by the Commission thereunder governing the filing of rate and contract publications, the filing of acceptable evidence of security for the protection of the public and designation of agents for service of process.

(2) If compliance is not made within the 30-day period, or within the time allowed in any extension, the temporary authority decision will be void. When this occurs, applicant may make written request to the Regional Office of domicile for reinstatement of the granting decision if it so desires, provided (i) that the request is made within 50 days from the date of service of the decision, (ii) that good cause can be shown as to why compliance was not made within the time allowed, and (iii) that the request for reinstatement contains positive assurance that applicant is now able to and will comply immediately with all applicable requirements, if the decision is reinstated.

[32 FR 20111, Dec. 20, 1967, as amended at 45 FR 3584, Jan. 18, 1980]

§ 1131.4 Determination of applications.

(a) *General.* (1) Initial determination of temporary authority applications will be made by the Commission's Motor Carrier Board, a Regional Motor Carrier Board (of domicile), or a Division of the Commission. For purposes of administration, distinctions in the applicable grounds of approval and rate filings will be maintained as between temporary authority of not more than 30 days (ETA), and temporary authority of up to 180 days (TA). Successive grants of temporary authority shall not exceed a total of 180 days; and, if a grant of an emergency authority results in total aggregate temporary authority grants of more than 180 consecutive days, the total, to the extent that it exceeds 180 days, will be reduced accordingly.

(2) While a grant of temporary authority is neither a permit nor a certificate under the Interstate Commerce Act it nevertheless enables the applicant to provide service either as a common or a contract carrier, as the case may be. Consequently, an applicant for temporary authority to operate as a motor contract carrier must show that the operation proposed is that of a contract carrier by motor vehicle as defined in section 203(a)(15)

of the Interstate Commerce Act; that is, that the applicant serves one or a limited number of shippers, and that the service proposed involves either the assignment of vehicles to the supporting shipper's exclusive use or the provision of a transportation service designed to meet the distinct needs of that shipper. No "dual operation" finding is necessary, however, where a grant of temporary authority to operate as a contract carrier is made to an existing common carrier and vice versa.

(3) Since a grant of temporary authority is not a permit or certificate, none of the related rights, under the Interstate Commerce Act, such as the incidental charter rights of passenger carriers and the implied authority to perform terminal services at points within the commercial zone but beyond the corporate limits of named municipalities, is applicable. Temporary authority may not be tacked or joined with permanent authority held by the carrier for the purpose of performing through transportation, nor can through, joint-line service be performed thereunder. Where there is a need for such services which are not implicit in grants of temporary operating authority this fact should be stated specifically so that an appropriate authority description may be issued.

(4) For administrative convenience, temporary authority to transport property will be considered to authorize the return transportation of shipper-owned trailers and of empty crates, barrels, bottles, hangers, pallets, bracing, dunnage, and other similar containers and shipping devices used in the outbound

(b) *Standards for determination.* The following standards shall be used, in the absence of special or unusual circumstances, in the initial or appellate determination under 49 U.S.C. 10928 of applications by motor carriers for temporary authority or emergency temporary authority.

(1) *General.* (i) Grants of temporary authority shall only be made upon the establishment of an immediate and urgent need for the transportation of passengers, or of particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs. Requests for temporary authority involving service to or from entire States, counties, or other defined areas will warrant approval only when supported by evidence that there is a compelling need for service to or from a representative number of points in each such State, county, or area, that there is a reasonable certainty that such service will be utilized, and that there is no carrier service available capable of meeting such need. Otherwise, such grants will be limited in accordance with the evidence to point-to-point authorizations covering the immediate and urgent need for service.

(ii) Any need which is the basis of an operation authorized by a temporary authority to be conducted for a period of less than an aggregate of 180 days is presumed not to be of a "continuing nature" unless the Commission otherwise expressly determines. If the need for a particular service ceases and a temporary authority covering such need expires or is revoked, and a new or separate need arises subsequent to such expiration or revocation, additional temporary authority for the 180-day aggregate, or for a shorter period, may be granted to the same carrier for the service, notwithstanding the prior grant or grants. However, an application filed after an aggregate of 180 days temporary authority has expired or been revoked will be denied unless the facts clearly show that the application is in reality based on a new need and not a continuation of the need on which the prior grant of authority was based.

(2) *Immediate and urgent need.* An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to

provide service, or comparable situations which require new motor carrier service before an application for permanent authority can be filed and processed.

(3) *Emergency temporary authority.* An immediate and urgent need justifying a grant of emergency temporary authority will be determined to exist only where it is established that existing carrier service is not capable of providing transportation service to meet immediate and actual emergencies, such as, for example, to prevent a plant shutdown, to move particular shipments in the interest of the national defense, to meet needs resulting from fires, floods, storms, or other disasters which affect the public health, safety, and welfare, disruption in existing carrier services by work stoppages, unexpected cessation of existing transportation service, lack of equipment capable of transporting the involved commodity, failure or lack of storage facilities and imminent spoilage of perishable commodities, or comparable situations which make it impracticable to afford the notice specified in § 1131.3(a).

(4) *Single-line service.* Generally, the desire of a shipper for single-line service in lieu of existing interchange or connecting-carrier service will not warrant a grant of temporary authority. A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved.

(5) *Complete service.* Requests for temporary authority on the basis of "providing a complete service to a shipper," even though existing carriers are participating in the traffic and in many instances can provide a substantial part of the service require special justification. Generally, in such instances, the applicant must establish with reasonable certainty that the existing carriers cannot adequately serve the shipper in their authorized territories, or that the supporting shipper has revised its distribution methods to such an extent that there actually is an immediate and urgent need for the complete service proposed.

(6) *Failure to provide equipment.* Temporary authority may be granted where existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers or the traffic of shippers in order to meet an immediate and urgent transportation need.

(7) *Alternate routes.* Except in unusual circumstances, temporary authority to operate over an alternate route will not be granted, even though the service route may be be circuitous, since the carrier-applicant may now operate between the points involved.

(8) *General bases for disapproval.* Applications for temporary authority may be denied for the following reasons:

(i) Failure to meet statutory standards.

(ii) Unfitness of the applicant.

(c) *Determination of fitness issues.* The following standards shall be used in the determination of fitness issues in applications by motor carriers for temporary authority under 49 U.S.C. 10928.

(1) *General.* (i) With regard to the urgency of the transportation need, an application for temporary authority will normally be denied where the applicant has been found unfit or in substantial noncompliance with the safety regulations of the Department of Transportation, unless the carrier has reestablished compliance or the application contains sufficient evidence to establish that the carrier has taken significant steps to remedy its deficiencies and is now in substantial compliance.

(ii) Where a fitness proceeding has been instituted against a carrier applicant, or where the Office of Consumer Protection has been ordered to intervene in a pending proceeding because the applicant's fitness is in issue, and no final decision has been entered, temporary authority shall normally not be denied, unless a fitness flag has been raised against applicant in accordance with the Commission's Fitness Flagging Procedures, 49 CFR Part 1067. Notwithstanding the existence of the fitness flag, an applicant

may attempt to show that there is no nexus between the issues raised in the flagged proceeding and in the involved application for temporary authority or that other good cause exists for granting temporary authority.

(iii) Alleged violations of law or regulations or a pending fitness investigation where no formal proceeding has been instituted shall not be used as grounds for denial unless the decision maker has evidence that the carrier applicant has a history of willful or flagrant violation of the Commission's rules and regulations. If temporary authority is denied for lack of fitness on this basis, the decision shall state the basis for denial. The applicant, by means of a petition for reconsideration, shall be afforded an opportunity to appeal the denial.

(iv) Any denial of temporary authority under these guidelines shall be without prejudice to the applicant's seeking reconsideration in accordance with the Commission's Rules of Practice (49 CFR Part 1100), and, with its request for reconsideration, submitting evidence concerning its fitness or safety compliance, as appropriate.

(2) *No presumption of fitness.* The granting of any temporary authority shall not give rise to any presumption regarding the applicant's fitness.

(3) *Revocation for unfitness.* Any grant of authority may be revoked by the Commission should it be determined that the applicant is unfit in accordance with the guidelines.

(4) *Urgency considerations.* Allegations of unfitness in temporary authority proceedings shall be considered in light of the urgency of the shipper's needs.

(49 U.S.C. 10321, 5 U.S.C. 553)

[32 FR 20111, Dec. 20, 1967, as amended at 45 FR 3585, Jan. 11, 1980; 45 FR 31375, May 13, 1980; 46 FR 13728, Feb. 24, 1981]

§ 1131.5 Rates, fares, charges, and special permission applications.

(a) *Rates and fares requirements generally*—(1) *Publish on less than 30 days notice.* Rates, fares, charges, and related provisions may be established under the provisions of Special Permission and Special Tariff Authority Order No. 78-1000-TA upon not less than 5 or 10 days' notice, depending on the circumstances, to apply on shipments transported under temporary operating authority. When that permission is used, the carrier shall comply with the competitive rate, fare, and charge level standards therein and need not comply with the standards set forth in this paragraph (a).

(2) *Motor common carriers.* A motor common carrier of property may not lawfully perform transportation until effective rates or charges and provisions are published, posted, and filed with the Commission, as required by section 217 of the Interstate Commerce Act and the Commission's rules and regulations issued thereunder. Rates or charges to be established upon less than 30 day's notice must not be less than existing motor common carrier commodity rates or charges on the same commodities in like quantities from and to the same points, or in absence thereof not less than the motor common carrier commodity rates or charges in the same commodities in like quantities from and to nearby points for similar distances. In the absence of existing motor common carrier commodity rates, the rates to be established on less than 30 days' notice shall not be less than the applicable motor common carrier class rates from and to the same points except as otherwise authorized in paragraph (b) of this section. A motor common carrier of passengers, or a motor common carrier of express, baggage and/or other articles of commerce (hereinafter referred to singly and collectively as property), restricted to the transportation thereof in the same vehicle with passengers, may not lawfully perform transportation until effective fares, rates, and/or charges, as the case may be, together with supporting tariff provisions are published, posted, and filed with the Commission as required by section 217 of the Interstate Commerce Act and the Commission's rules and regulations issued thereunder. Fares, rates, and charges to be established upon less than 30 days' notice must not be less than existing passenger motor common carrier fares, rates, and/or charges, as the case may be, from and to the same points, or in the absence

thereof, not less than the passenger motor common carrier fares or passenger motor common carrier property rates or charges from and to nearby points for similar distances. Detailed instructions on rate, fare, or charge filings, may be obtained from any Bureau of Operation's field office.

(3) *Motor contract carriers.* A motor contract carrier may not lawfully provide transportation until executed transportation contracts (where required to be filed), and effective rates, fares, and/or charges, as the case may be, together with supporting schedule provisions are on file with the Commission as required by section 218 of the Interstate Commerce Act and the Commission's rules and regulations issued thereunder. The filing of contracts covering transportation of passengers is not required. Except as otherwise authorized in paragraph (b) of this section, the rates, fares, and charges, proposed to be established upon less than 30 days' notice shall not be lower than would be permitted under paragraph (a)(2) of this section if applicant were a common carrier. However, if any of points of origin, destination, or territory to be served are at the time served by a contract carrier transporting the same commodities or transporting passengers or property in the same vehicle with passengers, the rates, fares, and charges may be made on the same or higher basis as those of such contract carrier, except that if the applicant has on file effective rates, fares, or charges for transporting the same commodities or transporting passengers or property in the same vehicle with passengers between other points in the same area, the rates, fares, and charges may be made on the same or higher basis as those others maintained by the applicant.

(4) *Notice of rate publication required.* Carriers may establish the temporary authority rates on either 5 or 10 days' notice, depending on the circumstances (see paragraph (a)(1) of this section). In most cases there is outstanding special permission or special tariff authority to publish rates on less than 30 days' notice covering transportation service by and for the Railway Express Agency and the substitution of motor for rail service. Most tariff publishing agents also have outstanding special permission or special tariff authority to publish on short notice the scope of operating rights to be granted pursuant to a temporary authority application and to add new participating carriers to their tariffs. The temporary authority application must state who will make the tariff publication, and whether it is to be made on 30 days' notice or upon less than 30 days' notice.

(5) *Special permission or special tariff authority applications.* (i) If publication is to be made on less than 30 days' notice by the carrier filing the temporary authority application and the carrier does not wish to use the general special permission or special tariff authorities referred to in this section, the temporary authority application must be accompanied by a special permission or special tariff authority application (three copies, only the original of which must be executed and bear the signature of the carrier or its agent officer, specifying title), setting forth the proposed rates, fares, charges, and other tariff, or schedule provisions clearly and completely. An accompanying exhibit may be used if identified by letter, such as exhibit A", and so referred to in the application. If the proposed provisions consist of rates, fares, and/or charges, all points of origin and destination must be shown or definitely indicated. If authority is sought to establish a rule, the exact wording of the proposed rule must be shown. If relief from existing regulations is sought, the exact form of publication must be shown.

(ii) The special permission or special tariff authority application must contain the names of motor carriers known to maintain competitive rates, fares, and charges between the same points or points related thereto, together with adequate identification of tariffs containing such rates, fares, and charges. It must also state whether or not such carriers have been advised of the proposal and if they have been advised that it is proposed to establish such provisions on less than 30 days' notice. The rates, fares, charges, and other tariff schedule provisions proposed to be established should con-

form to the competitive rate, fare, and charge level standards of paragraph (a)(2) of this section for motor common carriers or paragraph (a)(3) of this section for motor contract carriers. In the absence of effective commodity rates via competing carriers on the commodity or commodities to be transported, the Special Permission Board, upon a proper showing, may authorize the establishment of rates on a different level.

(b) *Emergency temporary authority*—(1) *Motor carriers.* Each application for emergency temporary authority for 30 days or less, except those involving the Railway Express Agency or substitution of motor for rail service, shall be accompanied by a statement of the rates, fares, charges, and other tariff or schedule provisions to be filed under Special Permission M-60160 or M-60161, §§ 1306.100, 1306.101, 1307.100 and 1307.101 of this chapter, for use in the event the authority is granted. Such statement shall contain the names of competing motor carriers transporting the same commodities or transporting passengers, or both, and the statement shall also contain the rates, fares, and/or charges, as the case may be, of such carriers between the same points or from or to nearby points for similar distances and the application will not be acted upon until such statement shall have been furnished by the applicant to the district supervisor.

(2) *Existing rates, fares, and charges.* If the statement of the proposed rates, fares, and/or charges, submitted with the emergency temporary authority application contains rates, fares, and/or charges lower than existing rates, fares, and charges, described under paragraph (a) (2) or (3) of this section by the named or other carriers, approval will not be recommended or authority granted. All emergency temporary authority will be expressly conditioned on establishing rates, fares, and/or charges, no lower than those set forth in the application, and a "W" tariff or schedule naming rates, fares, and charges lower than those set forth in the application will be rejected. Emergency temporary authority will be revoked for failure to file a proper "ETA" tariff or schedule.

(3) *Suspended or special permission rates, fares, or charges.* (i) In every case the carrier shall state in its emergency authority application whether there is under suspension at the time any rates, fares, or charges published for its account, or whether an application for special permission authority to file its rates, fares, and charges on less than 30 days' notice has been granted or denied, covering the same traffic from and to the same points in connection with another temporary or permanent authority application. If the applicant has rates, fares, or charges, or other tariff matter under suspension, or has received, or been denied special permission to file on less than 30 days' notice any such rates, fares, or charges not yet effective, covering the same traffic, the district supervisor will not recommend approval of the request nor will a grant be made of the emergency temporary authority.

(ii) If applicant carrier has rates, fares, or charges under suspension covering the same traffic, it should file a special permission application as set forth in paragraph (a)(5) of this section, stating a copy was served upon protestant(s) and requesting less-than-statutory notice authority to cancel the suspended matter and to file rates, fares, and/or charges according to paragraph (a) (2) or (3) of this section or, in the alternative, state that the suspended rates, fares, or charges will be defended and request less-than-statutory notice authority to file rates, fares, and/or charges conforming with paragraph (a) (2) or (3) of this section to apply during the suspension period, such rates, fares, and charges to be indicated to expire at the end of the suspension period.

(Secs. 204, 217, 218, 49 Stat. 546, as amended, 560, as amended, 561, as amended, 52 Stat. 1238, as amended; (49 U.S.C. 304, 317, 318, 319A))

[37 FR 15867, Aug. 5, 1972, as amended at 43 FR 1626 Jan. 26, 1978; 43 FR 8554, Mar. 2, 1978]

§ 1131.6 Petitions.

(a) *Petitions for reconsideration.* Petitions for reconsideration of decisions initially acting on temporary authori-

ty applications may be filed by any person. All petitions from decisions of the Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other petitions shall be filed in Washington, DC.

(b) *Replies.* Replies may be filed by any person to these petitions. If the facts stated in any petition disclose a need for accelerated action, this action, in the discretion of the Commission, may be taken before expiration of the time allowed for reply. Replies received after accelerated action on petition will be treated as petitions for reconsideration of the accelerated action and given corresponding accelerated treatment. All replies to petitions from decisions of a Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other replies shall be filed in Washington, DC.

(c) *Effect of petitions for reconsideration.* The filing of a petition for reconsideration does not have the effect of automatically staying the decision. The grantee carrier may conduct the operations authorized upon compliance with its tariff, insurance, and other requirements for the duration of the termporary authority, or until otherwise ordered.

(d) *Procedures.* The procedures governing petitions and replies are set forth in the Commission's General and Special Rules of Practice, 49 CFR 1100. For special time limits governing petitions and replies, see specifically § 1100.225(f).

[45 FR 3585, Jan. 18, 1980, as amended at 46 FR 13728, Feb. 24, 1981]

§ 1131.7 State registration of temporary authorities.

Notwithstanding the provisions of 49 CFR 1023.11, a motor carrier shall not be required to file with a State commission an emergency or temporary operating authority having a duration of 90 consecutive days or less if such carrier has: (a) Registered its other authority granted by the Interstate Commerce Commission authorizing operation in or through the involved State (a carrier possessing no other such authority may qualify for this exception upon compliance only with condition (b) below) and identified its vehicles or driveaway operation under the provisions of those standards set forth at 40 CFR 1023.31–1023.42, both inclusive; and (b) furnished to the State commission a telegram or other written communication from the motor carrier describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of those standards set forth at 49 CFR 1023.1 et seq.

[39 FR 2771, Jan. 24, 1974]

PART 1131a—TEMPORARY AUTHORITY APPLICATIONS UNDER SECTION 311(a) OF THE INTERSTATE COMMERCE ACT

Sec.

1131a.1 Controlling legislation and definitions.
1131a.2 Filing of applications.
1131a.3 Processing of applications.
1131a.4 Determination of applications.
1131a.5 Petitions.

AUTHORITY: 49 U.S.C. 911(a); 54 Stat. 943; 56 Stat. 177; 60 Stat. 345.

SOURCE: 39 FR 6711, Feb. 22, 1974, unless otherwise noted.

§ 1131a.1 Controlling legislation and definitions.

(a) *Controlling legislation.* Section 311(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 911(a), is the relevant legislation which the rules and regulations in this part are designed to implement. Extensions of temporary authority beyond 180 days are governed by the special rules, contained in Part 1101 of this chapter, promulgated pursuant to section 558 of the Administrative Procedure Act, 5 U.S.C. 558.

(b) *Definitions.* As used in this part, the definitions set forth in section 302 of the Interstate Commerce Act shall pertain to the terms utilized in this section.

§ 1131a.2 Filing of applications.

(a) *General.* All temporary authority applications are filed at, and processed by, the Commission's Regional Offices. The field staff of the Commis-

sion's Office of Consumer Protection conducts preliminary reviews of applications for temporary authority and transmits recommendations as to their disposition to the decisionmaker. The Office's Regional Offices maintain records of authorized carriers with headquarters in their region and of their operating authorities. Staff members are available for consultation and to give assistance on the obtaining of water carrier service, and guidance in the preparation of temporary authority applications and related supporting material, and in making rate and other required filings. Regional and field offices will furnish copies of necessary forms upon request.

(b) *How and where filed.* A separate application for each temporary authority sought shall be filed on Form OP-WC-25 (§ 1003.2 of this chapter). The signed original and two copies of each application and all supporting documents shall be filed with the Regional Office which has jurisdiction over the point at which applicant is domiciled, or other location as the Commission may designate in special circumstances. An applicant seeking temporary authority shall tender an original and two copies of a caption summary. Caption summaries must be double spaced and shall follow the format used for permanent authority notices, as described in *Revision of Application Forms,* 125 M.C.C. 790 (1976). Summaries shall incorporate the style changes noticed in the FEDERAL REGISTER issue of January 18, 1978 (43 FR 2632).

(c) *Supporting statement.* Each application for temporary authority must be accompanied by a supporting statement (s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers. Each such shipper's statement must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for water carrier service. Any such supporting statement must contain at least the following information:

(1) Description of the specific commodity or commodities to be transported (where the transportation of property is involved).

(2) Points or areas to, from, or between which such commodities or passengers are to be transported. (If service is needed to or from a territory or area rather than a specific point or points, clearly describe such territory or area and furnish evidence of a broad need to justify the territorial grant of authority requested.)

(3) Volume of traffic involved, frequency of movement, and how transported now and in the past.

(4) How soon the service must be provided and the reasons for such time limit.

(5) How long the need for such service likely will continue, and whether the persons supporting the temporary application will support a permanent service application.

(6) Recital of the consequences if service is not made available.

(7) The circumstances which created an immediate and urgent need for the requested service.

(8) Whether efforts have been made to obtain the service from existing water carriers, and the dates and results of such efforts.

(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal.

(10) Name and address of water carrier who will provide services and is filing application for temporary authority.

(11) If the person supporting the application has supported any prior application for permanent or temporary authority covering all or any part of the desired service, give the carrier's name, address, and water carrier docket number, if known, and state whether such application was granted or denied and the date of such action, if known.

[39 FR 6711, Feb. 22, 1974, as amended at 45 FR 3585, Jan. 18, 1980; 45 FR 31375, May 13, 1980]

§ 1131a.3 Processing of applications.

(a) *Notice to interested persons.* Notice of the filing of temporary authority applications shall be given by

the publication of a summary of the authority sought in the FEDERAL REGISTER, except as provided in (c) below. Summaries shall be prepared by applicant in accordance with § 1131a.2(b). These will be reviewed by the Commission's Regional Office and forwarded to the Office of the Secretary, Washington, DC.

(b) *Filing of protests.* Any person who can and will provide all or any part of the proposed service may file a protest against the application. Protests shall be specific as to the service which protestant can and will offer and shall consist of a signed original and two (2) copies. They shall be filed with the Regional Office named in the FEDERAL REGISTER publication within 15 calendar days after publication. One copy of a protest must be served on the applicant (or its authorized representative, if any) by U.S. mail or in person.

(c) *Exception.* The above procedures shall be followed in all temporary authority applications to conduct operations by water under section 311(a) of the Interstate Commerce Act, except in those in which the Commission, in its discretion, determines that the circumstances require greater expedition by utilizing other procedures deemed appropriate, including the elimination of the FEDERAL REGISTER publication and protest filing procedures.

(d) *Publication of rates and charges.* A carrier may not lawfully perform transportation under a grant of temporary authority unless and until compliance has been made with the rate filing requirements of section 306 of the Interstate Commerce Act.

(e) *Revocation for noncompliance, and reinstatement and extension of time for making compliance.* Temporary authority is approved subject to compliance within 30 days, or within such additional time as the Commission may approve, with the applicable provisions of the statute and the requirements, rules and regulations prescribed by the Commission thereunder governing the filing of rate and contract publications. If compliance is not made within the 30-day period, or within the time allowed in any extension thereof, applicant will be notified that the temporary authority order is of no further force and effect. Where this occurs, applicant may make written request for reinstatement of the granting order if it so desires, provided (1) that such request is made within 20 days from the date of the notice, (2) that good cause can be shown as to why compliance was not made within the time allowed, and (3) that the request for reinstatement contains positive assurance that applicant is now able to and will comply immediately with all applicable requirements, if the order is reinstated.

[39 FR 6711, Feb. 22, 1974, as amended at 45 FR 3586, Jan. 18, 1980]

§ 1131a.4 Determination of applications.

(a) *General.* (1) Initial determination of temporary authority applications will be made by the Commission's Motor Carrier Board, a Regional Motor Carrier Board (of domicile), or a Division of the Commission. No successive grants of temporary authority shall exceed a total of 180 days.

(2) Although a grant of temporary authority is neither a permit nor a certificate under the Interstate Commerce Act, it nevertheless enables the applicant to provide service either as a common or a contract carrier, as the case may be. Consequently, an applicant for temporary authority to operate as a water contract carrier must show that the operations proposed is that of a contract carrier by water carrier as defined in section 302(e) of the Interstate Commerce Act. No "dual operation" finding is necessary, however, where a grant of temporary authority to operate as a contract carrier is made to an existing common carrier and vice versa.

(3) Inasmuch as a grant of temporary authority is not a permit or certificate, none of the regulated rights, under the Interstate Commerce Act is applicable. Temporary authority may not be tacked or joined with permanent authority held by the carrier for the purpose of performing through transportation, nor can through, joint-line service be performed thereunder. Where there is a need for such services which are not implicit in grants of temporary operating authority this fact should be stated specifically so

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that an appropriate authority description may be issued.

(4) For administrative convenience, temporary authority to transport property will be considered to authorize the return transportation of shipper-owned trailers and of empty crates, barrels, bottles, hangers, pallets, bracing, dunnage, and other similar containers and shipping devices used in the outbound transportation covered by the temporary authority.

(b) *Standards for determination.* The following standards shall be used, in the absence of special or unusual circumstances, in the determination under 49 U.S.C. 10928 of applications by water carriers for temporary authority:

(1) *General.* (i) Grants of temporary authority shall only be made upon the establishment of an immediate and urgent need for the transportation of passengers, or of particular commodities or classes of commodities, from specified origin points or areas to specified destination points or areas, having no carrier service capable of meeting such needs. Requests for temporary authority involving service to or from ports in entire States, counties or other defined areas will warrant approval only when supported by evidence that there is a compelling need for service to or from a representative number of ports in each such State, county, or area, that there is a reasonable certainty that such service will be utilized, and there is no carrier service available capable of meeting such need. Otherwise, such grants will be limited in accordance with the evidence to port-to-port authorizations covering the immediate and urgent need for service.

(ii) Any need which is the basis of an operation authorized by a temporary authority to be conducted for a period of less than an aggregate of 180 days is presumed not to be of a "continuing nature" unless the Commission otherwise expressly determines. If the need for a particular service ceases and a temporary authority covering such need expires or is revoked, and a new or separate need arises subsequent to such expiration or revocation, additional temporary authority for the 180-day aggregate, or for a shorter period, may be granted to the same carrier for the service, notwithstanding the prior grant or grants. However, an application filed after an aggregate of 180-days' temporary authority has expired or been revoked will be denied unless the facts clearly show that the application is in reality based on a new need and not a continuation of the need on which the prior grant of authority was based.

(2) *Immediate and urgent need.* An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service, or comparable situations which require new water carrier service before an application for permanent authority can be filed and processed.

(3) *Single-line service.* Generally, the desire of a shipper for single-line service in lieu of existing interchange or connecting-carrier service will not warrant a grant of temporary authority. A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved.

(4) *Complete service.* Requests for temporary authority on the basis of "providing a complete service to a shipper," even though existing carriers are participating in the traffic and in many instances can provide a substantial part of the service require special justification. Generally, in such instances, the applicant must establish with reasonable certainty that the existing carriers cannot adequately serve the shipper in their authorized territories, or that the supporting shipper has revised its distribution methods to

such an extent that there actually is an immediate and urgent need for the complete service proposed.

(5) *Failure to provide equipment.* Temporary authority may be granted where existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers or the traffic of shippers in order to meet an immediate and urgent transportation need.

(6) *General basis for disapproval.* Applicants for temporary authority may be denied for the following reasons:

(i) Failure to meet statutory standards.

(ii) Unfitness of the applicant.

[39 FR 6711, Feb. 22, 1974, as amended at 45 FR 3586, Jan. 18, 1980]

§ 1131a.5 Petitions.

(a) *Petitions for reconsideration.* Petitions for reconsideration of decisions initially acting on temporary authority applications may be filed by any person. The filing of a petition for reconsideration does not have the effect of automatically staying the decision. The grantee carrier may conduct the operations authorized by the decision upon compliance with its tariff and other requirements for the duration of the temporary authority, or until otherwise ordered. All petitions from decisions of a Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other petitions shall be filed in Washington, DC.

(b) *Replies.* Replies may be filed by any person to the petitions; but, if the facts stated in any petition disclose a need for accelerated action, this action, in the discretion of the Commission may be taken before expiration of the time allowed for reply. Replies received after accelerated action on petition shall be treated as petitions for reconsideration of the accelerated action and given corresponding accelerated action. All replies to petitions from decisions of a Regional Motor Carrier Board shall be filed with the Regional Office in which the application was filed. All other replies shall be filed in Washington, DC.

[45 FR 3586, Jan. 18, 1980]

PART 1132—TRANSFERS OF OPERATING RIGHTS

Sec.

1132.1 Definitions.
1132.2 Applications.
1132.3 Criteria for approval.
1132.4 Petitions for reconsideration.
1132.5 Operations by fiduciaries.

AUTHORITY: 49 U.S.C. 10926; 5 U.S.C. 552(b).

SOURCE. 44 FR 36391, June 22, 1979, unless otherwise noted.

NOTE: These rules spell out the procedures which enable motor carriers to obtain approval from the Interstate Commerce Commission to merge, transfer, or lease their operating rights in financial transactions not subject to Section 11343 of the Interstate Commerce Act.

§ 1132.1 Definitions.

For the purposes of this part, the following definitions shall apply—

(a) *Transfer.* The sale or lease of interstate motor carrier operating rights [1] or the merger of two or more carriers or a carrier and a non-carrier, when the transactions are not subject to section 11343 of the Act.

NOTE: The term transfer as used in this part does not apply to transactions to accomplish changes in the form of a business, such as the incorporation of a partnership or sole proprietorship. To accomplish such changes, a letter providing the information set forth below should be addressed to the Office of Secretary, Applications and Fee Unit, Interstate Commerce Commission, Washington, D.C. 20423. The envelope should be marked NAME CHANGE. The information required is (1) The docket number(s) and name of the carrier requesting the change; (2) a copy of the articles of incorporation on the state certificate reflecting the corporation; (3) the name(s) of the owner(s) of the stock and the distribution of the shares; (4) the name of the officers and directors of the corporation; and (5) a statement that there is no change in the ownership, management or control of the business.

[1] The execution of a chattel mortage, deed of trust, or other similar document does not constitute a transfer or require the Commission's approval. However, a foreclosure for the purpose of transferring an operating right to satisfy a judgment or claim against the record holder or to settle an estate shall not be effectuated without approval of the Commission.

(b) *Operating Rights.* Authority to perform transportation as a motor carrier as authorized by a certificate of public convenience and necessity, a permit, or a certificate of registration issued by this Commission. The term includes authority held by virtue of the gateway elimination regulations published in the FEDERAL REGISTER as letter-notices.

(c) *Certificate of Registration.* The evidence of a motor carrier's rights to engage in interstate or foreign commerce within a single State as established by a corresponding State certificate.

(d) *Duplicating Service Rights.* Operating rights authorizing the transportation of passengers, or of the same commodities, from and to, or between, the same points in substantially competitive or duplicative service.

(e) *Person.* An individual, partnership, corporation, company, association or other form of business, or a trustee, receiver, assignee, or personal representative of any of these.

(f) *Record Holder.* The person shown on the records of the Commission as the legal owner of the operating rights.

(g) *Control.* A relationship between persons, including actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding or investment company, or any other means.

(5 U.S.C. 553; 49 U.S.C. 10301)

[44 FR 36391, June 22, 1979, as amended at 46 FR 15510, Mar. 6, 1981]

§ 1132.2 Applications.

(a) *Form.* Transfers shall be requested in writing on the specific form prescribed by the Commission. They also may be requested by letter if all required facts are presented.

(b) *Filing.* The original and two copies shall be filed with the Secretary of the Commission, Washington, D.C. 20423. The original must show that an additional copy has been furnished to the Commission's District Supervisor for the district(s) in which the applicant's headquarters are located.

(c) *Content:* Particular facts to be included depend on the type of transaction presented: (1) *Category 1 Transfers.* Transactions in which the person to whom the operating rights would be transferred is not an ICC motor carrier and is not affiliated with any ICC motor carrier. (2) *Category 2 Transfers.* Transactions in which the person to whom the operating rights would be transferred *is* an ICC motor carrier and/or is affiliated with an ICC motor carrier.

In Category 1 and Category 2 transfers, applicants shall furnish the following:

(a) Full name, address, and signature of the transferee;

(b) Full name, address, and signature of the transferor;

(c) A copy of the complete ICC operating authority of transferor, which shall be clearly marked to show the rights being transferred and those being retained;

(d) A copy of each written agreement covering the proposed transfer of the ICC operating rights, State authorities, real estate, equipment, and other property involved in the transaction;

(e) The status of the proceedings for the transfer of the State certificate(s) corresponding to the certificate of registration being transferred;

(f) A certified copy of any court order issued to accomplish the transfer or to establish the authority of an executor, trustee, receiver, or the like; and

(g) A statement on whether the proposed transfer (will) (will not) significantly affect the quality of the human environment.

Category 2 applicants also must submit the following:

(a) A copy of the complete ICC operating authority of the transferee and its ICC motor carrier affiliate(s);

(b) Condensed income statements for applicants and their ICC affiliates for the preceding and current calendar years;

(c) Current balance sheet and *pro forma* balance sheet for the transferee, the latter of which shall be adjusted to reflect consummation of the proposed transfer; and

(d) A statement indicating whether (a) the operating rights to be transferred can or will be joined with any irregular route operating rights of transferee, and (b) a gateway elimination application is being filed concurrently.

(d) *Notice to the public.* The Commission will furnish public notice of transfer applications *only* if they are approved. Notice shall be given by publishing a summary of the transaction in the FEDERAL REGISTER. Protests

received prior to the notice will be rejected.

§ 1132.3 Criteria for approval.

(a) A transfer shall be approved if: (1) The transaction is exempt from Section 11343 (formerly Section 5) of the Act; (2) transferee is fit to receive authority; and (3) no public harm will result.

(b) Proposed divisions of operating rights *along clearly defined lines* generally may be approved when they do not unduly fragment the operating rights of the transferor, improperly divide them, or result in substantially competitive or duplicative services. The Commission usually will *not* approve applications which propose: (1) The separation of a commodity or commodities from a class of substantially related commodities or from general commodity authority; or (2) the transfer of an alternate route or intermediate or off-route point from the route to which it is appurtenant.

(c) The Commission will not approve a transfer or lease of operating rights to a person who controls, is controlled by, or is under common control with another person who is the record holder of operating rights which materially duplicate those to be transferred.

(d) The Commission will not approve a proposed lease of operating rights for more than one year, unless there are unusual or compelling circumstances.

(e) The Commission will not approve a transfer of operating rights if it finds that transferor obtained the rights for speculation or that transferee does not intend to engage in bona fide motor carrier operations.

§ 1132.4 Petitions for reconsideration.

(a) Petitions seeking reconsideration must be filed within 20 days following service of denial decisions or publication of affirmative decisions in the FEDERAL REGISTER. Within 20 days after the final date for filing, any interested person may file and serve a reply upon the parties to the proceeding. Petitions shall be filed with the Secretary of the Commission and shall: (1) Detail alleged specific errors in the decision; (2) include concise arguments in support of each allegation; and (3) indicate service upon the parties to the proceeding.

(b) If oral hearing is requested, petitioner shall explain why the testimony and evidence it seeks to present cannot be readily developed with affidavits and adjudicated without a hearing.

§ 1132.5 Operations by fiduciaries.

(a) Persons authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of operating rights, may continue the operations without approval of a transfer. Within 30 days after assuming control, such persons shall give notice to the Secretary of the Commission. This shall consist of a certified copy of the court order appointing the fiduciary, a statement describing the operations and the particular operating rights affected, the full name and address of the person(s) continuing the operations, and the circumstances and date when control of the operations was assumed. If a court order has not been issued, the fiduciary must submit the best evidence of his/her authority.

(b) Operations by fiduciaries may be continued in the name of the record holder of the operating right, followed by the name of the person conducting operations. For example: John Jones, Richard Smith, administrator.

(c) All tariffs, schedules, reports or other documents required to be filed by record holders under the provisions of the Act and the Commission's rules shall be made by the fiduciary and shall constitute compliance for the record holder.

PART 1133—TRANSFERS OF PASSENGER BROKERS' LICENSES

Sec.

1133.1 Transfer of passenger brokers' licenses, change in control of corporations and associations holding brokers' licenses.

1133.2 Petitions for reconsideration.

CROSS REFERENCE: See also Rule 247 of the Special Rules of Practice (§ 1100.247 of this chapter).

§ 1133.1 Transfer of passenger brokers' licenses, change in control of corporations and associations holding brokers' licenses.

(a) A license issued a passenger broker under section 211 of the Interstate Commerce Act may be transferred, if approved by the Commission, upon application and proof that the transferee is fit, willing, and able to perform the duties, and that the transfer will not be contrary to the public interest.

(b) A change in the control of a corporation or association holding a brokers license may be accomplished only with the approval of the Commission upon application and proof that the change in control will not be contrary to the public interest.

(c) The form of application for authority under this part, the manner of filing, notice to the public, and the filing of protests will be the same as provided under § 1132.2 of this chapter.

(49 U.S.C. 303, 304, 306, 309, 311, 312)

[41 FR 1486, Jan. 8, 1976]

§ 1133.2 Petitions for reconsideration.

Petitions seeking reconsideration of an order entered pursuant to this part, will be handled as provided in Rule 225 of the General Rules of Practice and § 1132.4 as set forth in this chapter.

(49 U.S.C. 303, 304, 306, 309, 311, 312)

[41 FR 1486, Jan. 8, 1976]

PART 1134—CONTROL OR CONSOLIDATION OF MOTOR CARRIERS OR THEIR PROPERTIES

Sec.

1134.1 Application for authority to merge properties or franchises.
1134.3 Computation of gross operating revenues of carriers involved in unifications.
1134.4 Deduction of revenues from sources other than regulated transportation.
1134.6 Application for approval of temporary operations.
1134.50 Application for authority to acquire control.
1134.51 Control of duplicate operating rights.

AUTHORITY: Secs. 1, 5, 12, 24 Stat. 379, as amended, 380, as amended, 546, as 383, as amended, 49 Stat. 544, as amended, amended, 555, as amended; 49 U.S.C. 1, 5, 12, 303, 304, 312, unless otherwise noted.

SOURCE: 32 FR 20118, Dec. 20, 1967, unless otherwise noted.

§ 1134.1 Application for authority to merge properties or franchises.

(a) Applications for authority under section 5, Interstate Commerce Act, to consolidate, merge, purchase, or lease operating rights and properties, or any part thereof of a motor carrier, shall be in the form and contain the information called for in the form of application, designated Form OP-F-44 (§ 1003.1 of this chapter).

(b) The original of each application and three copies shall be filed with this Commission, one copy with each of the Regional Operations Directors of the Bureau of Operations in which the headquarters of the carriers are located and one copy shall be delivered, upon written request, by first-class mail, to the Board, Commission, or official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in each State in which the carriers operate. A summary of the application (as provided in § 1100.240(b) of this chapter) to the appropriate Board or official of the State in which the headquarters of the carriers are located.

(c) Proof of service of copies of the application as provided in paragraph (b) of this section shall be made in connection with and as part of the original application filed with this Commission.

[32 FR 20118, Dec. 20, 1967, as amended at 34 FR 18122, Nov. 11, 1969; 43 FR 3565, Jan. 26, 1978; 44 FR 17679, Mar. 23, 1979]

§ 1134.3 Computation of gross operating revenues of carriers involved in unifications.

In unifications under the provisions of Section 5 of the Interstate Commerce Act, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to Part II of the Act, as amended, shall be deemed to have exceeded $300,000

for the period of 12 consecutive months, ending not more than 6 months preceding the date of the agreement of the parties covering the transaction, unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by section 220 of the act, showing annual gross operating revenues from motor carrier operations totaling more than $300,000, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $300,000; or

(c) A reasonable estimate of the annual gross operating revenues of any carrier which sold or otherwise disposed of any portion of its operating rights or which began new operations or extended existing operations subsequent to the end of the preceding calendar year and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than $300,000.

NOTE: The foregoing § 1134.3 shall apply only with respect to agreements entered into on or after September 25, 1965. In the case of agreements entered into before May 1, 1966, and before May 1 of each succeeding year, the preceding calendar year shall mean the year ended December 31, 1964, and each succeeding calendar year.

(Secs. 206, 209, 211, 49 Stat. 551, 552, 554; 49 U.S.C. 306, 309, 311)

[32 FR 20118, Dec. 20, 1967, as amended at 40 FR 42343, Sept. 12, 1975]

§ 1134.4 Deduction of revenues from sources other than regulated transportation.

(a) In determining whether a proposed transaction is not subject to the provisions of Section 5, Interstate Commerce Act, applicant motor carriers, and their affiliate motor carriers must select the same 12-month period and indicate the 12-month period selected as provided in § 1134.3 and disclose the gross revenues received by each such carrier during the critical period selected and the revenues derived from sources other than transportation subject to Part II of the Act, which latter revenues may be deducted from the gross revenues for the purpose of determining jurisdiction.

(b) Applicants shall show the amounts which they claim should be deducted, the sources from which the revenues were derived, and the circumstances under which transportation performed is claimed not to have been subject to such part, in transfer proceedings under Part 1132 of this chapter or in support of a motion for dismissal of proceedings under this part.

(c) Applicants shall not be required to show that the revenues computed under § 1134.3 were derived from transportation subject to part II.

(Secs. 206, 209, 211, 49 Stat. 551, 552, 554; 49 U.S.C. 306, 309, 311)

[32 FR 20118, Dec. 20, 1967, as amended at 40 FR 42343, Sept. 12, 1975]

§ 1134.6 Application for approval of temporary operations.

(a) Applications for approval under section 210a(b), Interstate Commerce Act, of the temporary operation of motor-carrier properties sought to be acquired under separately filed application under section 5, shall be in the form and contain the information called for in the form of application, designated OP-F-46 (§ 1003.1 of this chapter).

(b) The original of each application and three copies shall be filed with this Commission, one copy with each of the Regional Operations Directors of the Bureau of Operations in which the headquarters of applicants are located, and one copy shall be delivered, upon written request, by first-class mail, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in each State in which the appli-

cants operate. A summary of the application (as provided in § 1100.240(b) of this chapter) shall be delivered in the same manner to the appropriate Board or official of the State in which the headquarters of applicants are located.

(c) Proof of service of copies of the application as provided in paragraph (b) of this section shall be made in connection with and as part of the original application filed with this Commission.

[32 FR 20018, Dec. 20, 1967, as amended at 38 FR 26205, Sept. 19, 1973; 43 FR 3565, Jan. 26, 1978; 44 FR 17679, Mar. 23, 1979]

§ 1134.50 Application for authority to acquire control.

(a) Applications for authority under section 5, Interstate Commerce Act, to acquire control of a motor carrier or motor carriers through ownership of stock, or otherwise, shall be in the form and contain the information called for in the form of application, designated Form OP-F-45 (§ 1003.1 of this chapter).

(b) The original of each application and three copies shall be filed with this Commission, one copy with each of the Regional Operations Directors of the Bureau of Operations in which the headquarters of carriers are located, and one copy shall be delivered upon written request, by first-class mail, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in each State in which the carriers operate. A summary of the application (as provided in § 1100.240(b) of this chapter) shall be delivered in the same manner to the appropriate Board or official of the State in which the headquarters of the carriers are located.

(c) Proof of service of copies of the application as provided in paragraph (b) of this section shall be made in connection with and as part of the original application filed with this Commission.

[32 FR 20118, Dec. 20, 1967, as amended at 34 FR 18122, Nov. 11, 1969; 43 FR 3565, Jan. 26, 1978; 43 FR 6789, Feb. 16, 1978; 44 FR 17679, Mar. 23, 1979]

§ 1134.51 Control of duplicate operating rights.

(a) All applications under section 5 of the Interstate Commerce Act which would result in the control or management in a common interest of two or more motor carriers must, as a condition precedent to approval, comply with one or more of the following conditions where unqualified approval would result in the holding of duplicate operating rights by any one or more of the carriers presently controlled and the carrier or carriers sought to be controlled, or by any two or more carriers sought to be controlled:

(1) One or more of the carriers holding duplicating authority shall request cancellation to the extent required to terminate all duplications, specifying the particular operating rights to be canceled, so that only one of them shall retain authority to operate over the same route or to render the same service between the same points;

(2) The applicant for control shall submit a plan and timetable to eliminate the duplications at the earliest practicable date so that only one of the carriers to be thereafter controlled will hold authority to operate over the same route or to render service between the same points;

(3) If cogent and acceptable reasons exist why duplicate operating rights under common control should be permitted to continue, then the certificates of the carriers holding duplicating authority shall be appropriately conditioned to provide that the operating rights, to the extent they duplicate, may not be thereafter severed from common ownership by sale or otherwise.

(b) Applicants in such applications shall be responsible for specifying the particular condition or conditions in paragraph (a) of this section which are preferable to them, but such statement of preference shall not preclude the Commission from imposing a different condition or conditions should the situation warrant. If applicant indicates a preference for any condition other than paragraph (a)(1) of this section, then the facts and circumstances relied upon to warrant approv-

al under such conditions must be stated with particularity in the application.

(c) Where an applicant is permitted to continue the conduct of duplicate operations under common control pursuant to a plan as provided in paragraph (a)(2) of this section, approval thereof will be conditioned upon the reporting by applicant at intervals of no more than six (6) months of the need for continuation of and the developments in its approved plan to end such common control of duplicating operating rights; and approval shall be further conditioned to provide a reservation of jurisdiction in the Commission for a reasonable period to reopen at any time for the purpose of ordering an end to the duplication by cancellation, merger, or otherwise.

[35 FR 7559, May 15, 1970]

PART 1135—CORPORATE REORGANIZATIONS OF MOTOR CARRIERS

§ 1135.1 Information required to be filed with the Secretary of the Commission.

Concurrently with the filing of any plan of corporate reorganization, amendment thereto, or modification thereof, of a motor carrier in proceedings under the Bankruptcy Act, as amended, in a District Court of the United States required to be submitted to the Interstate Commerce Commission under the provisions of said Bankruptcy Act, as amended, there shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423:

(a) Seven copies of such plan of reorganization, of which one copy shall be certified.

(b) Verified original and 6 copies of statement containing the following information unless such information is contained in the plan of reorganization:

(1) Number assigned to debtor's certificate or permit under Part II of the Interstate Commerce Act or to application therefor.

(2) Date of filing of petition for reorganization.

(3) Date of approval of petitions for reorganization.

(4) If petition approved prior to June 22, 1938, whether court has deemed application of provisions of Chapter X, Bankruptcy Act, as amended, practicable. If order entered, one certified copy and 6 conformed copies thereof should be furnished.

(5) If a transfer or lease of debtor's rights to operate as a motor carrier in interstate or foreign commerce, or transfer of control of debtor through stock ownership is contemplated under plan of reorganization—if known, name and address of prospective transferee, status of such transferee, including affiliation with other carriers subject to Interstate Commerce Act, and separately for debtor, prospective transferee and affiliates of latter, if any, number of motor vehicles owned, leased, controlled or operated.

(c) Verified original and 6 copies of:

(1) Balance sheet statement of debtor as of latest available date.

(2) Income statement of debtor covering each of the last 2 calendar years, and the current calendar year to the end of the latest month during which operations have been conducted.

(3) If under the plan of reorganization there is contemplated issuance of securities or assumption of obligation or liability as lessor, lessee, guarantor, endorser, surety, or otherwise, in respect of the securities of any other person by debtor or prospective transferee—

(i) Statement showing securities of such person outstanding, securities to be issued, and obligations or liabilities to be assumed, segregated by classes and amounts (par value of securities, or if such have no par value, the fair market value thereof as of date of issue), and

(ii) If not furnished under paragraph (c)(1) of this section, balance sheet statement as of latest available date of such person proposing to issue securities, or assume obligation or liability.

(d) Notice of time and place of any hearing on the proposed plan of reorganization.

(49 Stat. 546, as amended, 551, as amended, 552, as amended, 555, as amended, 557, as amended; 49 U.S.C. 304, 306, 309, 312, 314)

[32 FR 20119, Dec. 20, 1967]

PART 1136—COMPENSATED INTERCORPORATE HAULING OPERATIONS

Sec.
1136.1 Scope.
1136.2 Applicability.
1136.3 Notification.
1136.4 Change(s) in participation in intercorporate hauling.

AUTHORITY: 49 U.S.C. 103231 and 5 U.S.C. 553.

SOURCE: 45 FR 86764, Dec. 31, 1980, unless otherwise noted.

§ 1136.1 Scope.

Compensated transportation service by a member of a corporate family for other members of the same corporate family ("Compensated Incorporate Hauling" or "CIH") is exempt from Commission regulation except for certain notice requirements. To qualify for the exemption, the participants shall be members of the corporate family in which the parent owns, directly or indirectly, a 100-percent interest in the subsidiaries. These regulations prescribe procedures for compliance with the notice requirements of 49 U.S.C. 10524 (b) and (c).

§ 1136.2 Applicability.

Motor carrier service under this exemption may be performed as soon as the notice required by these rules is filed with the Commission. Where transmission of the notice is through use of the mails, operations may begin as soon as the materials are placed in the mail. In all cases the date of filing will be the date of receipt at the Interstate Commerce Commission Offices.

§ 1136.3 Notification.

(a) General requirements—Whenever a corporation seeks to initiate compensated intercorporate hauling it shall be necessary for the corporation to prepare a FEDERAL REGISTER notice in accordance with the following format:

NOTICE OF INTENT TO ENGAGE IN COMPENSATED INTERCORPORATE HAULING OPERATIONS

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) * * *
(ii) * * *
(iii) * * *

(b) Parties subject to requirements—All notices must be submitted by the parent of the corporate family for whose members the proposed compensated intercorporate hauling operations are to be performed.

(c) Affidavit—The notice shall include the following affidavit from an officer or other person legally qualified to act on behalf of the parent:

I affirm that ———— is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

(d) Declarations—An affidavit of 100-percent ownership under subsection (c) shall be accompanied by a declaration of the individual making the affidavit, in substantially the following form:

I, ————, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

The declaration shall be signed by the person making the affidavit. An affidavit executed in this manner does not need to be notarized.

(e) To whom notice sent—The original and one copy of a notice of intent to engage in CIH operations shall be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423. A notation shall appear on the envelope in which the notice is transmitted as follows: *"CIH Notice"*. On receipt the Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and stating a projected publication date.

(f) Cover letter requirement—Where the office which has prepared a notice on behalf of a corporate family differs from the one executing the notice, that office shall be identified in a

cover letter attached to the tendered notice.

(g) Miscellaneous—The filing of a CIH notice does not initiate a proceeding before the Commission nor is any right of protest created by publication of a notice in the FEDERAL REGISTER; publication is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation.

(h) Filing fees—Filing fees as provided for in 49 CFR 1002 shall accompany the original notice of intent required by this Part. A separate filing fee shall also accompany each updated notice required by this part.

§ 1136.4 Change(s) in participation in intercorporate hauling.

(a) If the parent intends that an additional subsidiary participate in the compensated intercorporate hauling, it shall file an updated notice.

(b) Whenever the interest which a corporation owns in a subsidiary participating in compensated intercorporate hauling becomes less than 100 percent, operations under 49 U.S.C. 10524(b), by or for that subsidiary, shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices will be subject to publication in the FEDERAL REGISTER and shall be submitted in the format prescribed in § 1136.3(a). These will be subject to the filing fee provided in 49 CFR 1002.2(d)(46).

(d) Where there is action by a corporate family which affects the status of a member participating in CIH operations, but the scope of the operations remain unchanged, an updated notice need not be filed. Such actions include, but are not limited to: name changes by a parent or subsidiary; absorption of a subsidiary into a parent resulting in extinction of its separate, corporate status. However, name changes by a parent or subsidiary require a supplemental notice under 49 CFR 1136.4. Appropriate changes to indicate such occurrences shall appear in any updated notices required by paragraphs (a) and (b) of this section.

PART 1137—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY

Subpart A—General

Sec.
1137.1 Purpose.
1137.2 Applicability of rules.
1137.3 Definitions.

Subpart B—Procedures

1137.10 Form and content of application.
1137.11 Notice.
1137.12 Participation of interested persons.
1137.13 Furnishing a copy of the application package to interested persons.
1137.14 Disposition of the application.
1137.15 Compliance.

Subpart C—Guidelines for Determining Applications

1137.20 Scope of this subpart.
1137.21 Commodity descriptions.
1137.22 Intermediate point service.
1137.23 Round-trip service.
1137.24 Territorial authority.
1137.25 Miscellaneous restrictions.
1137.26 Contract carriers.
1137.27 Limited term authority.
1137.28 Availability of other application procedures.
1137.29 Impact of restrictions removal.

AUTHORITY: 49 U.S.C. 10321 and 10922(h); 5 U.S.C. 553.

SOURCE: 45 FR 86757, Dec. 31, 1980, unless otherwise noted.

Subpart A—General

§ 1137.1 Purpose.

These regulations govern applications filed by motor carriers of property seeking to remove operating restrictions from their certificates or permits in order to:

(a) Broaden reasonably the categories of property authorized by the carrier's certificate or permit;

(b) Authorize transportation service to intermediate points on the carrier's routes;

(c) Provide round-trip authority where only one-way authority exists;

(d) Eliminate unreasonable or excessively narrow territorial limitations; or

(e) Eliminate any other restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

These regulations implement of 49 U.S.C. 10922(h)(1)(B) and 10922(h)(2).

§ 1137.2 Applicability of rules.

Applications may be filed under these rules to remove restrictions or to broaden authority in certificates and permits issued pursuant to applications filed before December 28, 1980.

§ 1137.3 Definitions.

(a) *County.* "County" means (1) a county in any State, a judicial district in Alaska, and a parish in Louisiana and (2) a city, town, or village in any State which is not administratively part of a county, New York, NY, and Washington, D.C,, and their commercial zones as defined by the Commission.

(b) *STCC.* "STCC" means the Standard Transportation Commodity Code Tariff currently on file with the Commission at any given time.

Subpart B—Procedures

§ 1137.10 Form and content of application.

(a) *Form and filing requirements.* No application form is prescribed for filing applications under these rules. Applicants shall submit an original and one copy of their applications to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. Applicants shall also file a copy of the complete application in the regional office of the Commission for the region in which they are domiciled. Applications shall be typewritten or printed on paper measuring approximately 8½ by 11 inches, with a 1½ inch left-hand margin. Only the original need be signed. A check or money order payable to the Interstate Commerce Commission covering the applicable filing fee must accompany the application. The envelope containing the application and check shall be clearly marked "RESTRICTION REMOVAL APPLICATION". Also each application shall be clearly marked, in the upper right-hand corner of the top page: "RESTRICTION REMOVAL".

(b) *Information which shall accompany the application.* The application shall contain the following information, in the same order as set forth below:

(1) The exact name and address of the applicant and the docket number assigned by the Commission to the applicant's authorities.

(2) The name, address, and telephone number of applicant's representative.

(3) A copy of the certificate or permit from which applicant seeks to have restrictions removed or which it proposes be broadened.

(4) A proposed draft of the certificate or permit (commodity and territorial descriptions) with the restrictions removed or the authority broadened as proposed, together with sufficient information for the Commission to determine readily the precise portions of the existing authority which applicant proposes be modified. The redrafted certificate or permit shall be in the same format as the original so that, if the application is granted, it can be issued promptly without further redrafting by the Commission.

(5) In the case of an application to remove a restriction of a type found by the Commission to be inappropriate (see § 1137.25(7) of this part), a reference to the Commission decision in which an identical or substantially similar restriction was found inappropriate.

(6) A caption summary (an original and one copy) of the modifications proposed, suitable for publication in the FEDERAL REGISTER. The caption summary shall include *an accurate summary of the restrictions applicant seeks removed, the authority applicant seeks broadened under these rules, or the authority the applicant would hold if its application were granted. It shall also include the authority (including specific sub numbers) which would be superseded by a grant of the application. For example, a caption summary could state that, "The application seeks to modify Sub-Nos. 1-10, by broadening the commodity description in the authorities from liquid chemicals to chemicals or allied products; by replacing the plantsite restrictions in the authorities with county-wide authority in X, Y, and Z Counties, IL; and by eliminating the in bulk restriction* in *all of the named authorities.*

The caption summary shall be double-spaced on plain white paper (no letter heads). Each summary will be checked by Commission staff for its accuracy and *failure to describe accurately the changes applicant seeks may result in a rejection of the application.*

(c) *Information that shall accompany the application.*The application shall include a statement describing the effect of the proposal upon one or more of the following factors:

(1) The consumption of energy resources;

(2) Potential cost savings and improved efficiency;

(3) The provisions of the transportation policy set forth in 49 U.S.C. 10101(a); or

(4) The provision and maintenance of service to small and rural communities and small shippers.

(d) *Related restriction removal.*Applicants are expected to combine reasonably related restriction removal requests or requests for broadening of authority in a single application. Two categories of requests are generally considered related: (1) requests related to the same certificate or permit authority. An example of this category would be a carrier which holds a one-way certificate and desires to obtain backhaul authority as well as to broaden its territorial and commodity authority under these rules. (2) Requests seeking to remove the same restriction, or restrictions having a similar effect, from different authorities. An example of this would be a carrier which desires to remove the same equipment restriction from a number of certificates under these rules. In applications combining requests as described above, each request shall be clearly marked and segregated, and each request shall comply with the requirements set forth in § 1137.10(b) (3), (4), (5), and (6). Failure to comply will result in a rejection of the application. Carriers are free to file consolidated applications which do not fit into the two categories described above.

(e) *Incomplete applications.*Due to the time limits imposed by 49 U.S.C. 10922(h)(2), the Commission cannot await the supplementing of incomplete applications or make extensive revisions to draft FEDERAL REGISTER captions. The failure to submit a complete application or to include a proper caption summary will result in rejection of the application.

(f) *Repeat applications.*—A certificate or permit can be reformed under these rules more than one time. However, a restrictions removal application shall not be filed before a preceding application to reform the same authority has been processed by the Commission.

§ 1137.11 Notice.

Notice to the public of the filing of an application under these rules will be given by the Commission through publication of a caption summary in the FEDERAL REGISTER. Applicant shall deliver (by mail or in person) a copy of the caption summary to the State transportation board or official of applicant's domicile. Applicant shall mail a copy of the application to this State board or official or any State through which the operations described in the application would be performed upon their written request. Applicant shall make copies of the application available for public inspection at its principal place of business and at the office of its representative if at a different location. A copy of the application is also available for inspection at the ICC, Washington, D.C., Office of the Secretary.

§ 1137.12 Participation of interested persons.

Any interested person may comment on the applicant's proposal. Comments (an original and one copy) shall be filed with the Commission within 25 days of the date of publication of notice of the application in the FEDERAL REGISTER. The envelope containing the comment and the comments shall be clearly marked "RESTRICTION REMOVAL COMMENTS." Comments shall be directed to either (1) the merits of the particular proposal, or (2) whether the proposal should properly be considered under these rules.

§ 1137.13 Furnishing a copy of the application package to interested persons.

Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be in writing and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant is required to mail the copy within 5 days of receipt of the request. Non-compliance with this section by applicant may result in dismissal of the application.

§ 1137.14 Disposition of the application.

(a) *Basis for determining the application.* Except in extraordinary circumstances, applications will be determined solely on the basis of the application itself and any comments that are received. There will be neither oral hearings nor the opportunity for the submission of evidence under modified procedure.

(b) *The Commission's decision.* Applications will be published in the FEDERAL REGISTER in the form of tentative decisions granting the authority requested. If no comments are filed, the application will stand granted at the *conclusion of the 25-day comment period,* unless the Commission, prior to that time, stays the effectiveness of the tentative decision.

(c) *Administrative finality and appeals.* A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is discretionary and is governed by the Commission's appeal regulations at 49 CFR 1100.98. Any party seeking review should specify the "extraordinary circumstances" involved in the proceeding to enable the Commission to extend the deadline for final Commission action an additional 90 days.

§ 1137.15 Compliance.

A reformed certificate or permit will be issued upon a grant of an application. Prior to beginning operations under the newly issued authority, compliance must be made with the following statutory and regulatory requirements: (a) for motor common carriers—49 CFR 1043, 1044, and 1310, and (b) for motor contract carriers—49 CFR 1043, 1044, and 1310.

Subpart C—Guidelines for Determining Applications

§ 1137.20 Scope of this subpart.

This subpart contains guidelines designed to assist applicants in filing applications for the removal of operating restrictions. The guidelines indicate certain types of restrictions or operating limitations in operating authorities which the Commission considers, under normal circumstances, to be excessively narrow, wasteful of fuel, inefficient, or contrary to the public interest. They suggest ways in which some such restrictions might reasonably be eliminated or in which limited authorities might be broadened. The guidelines are not intended to constitute a prejudgment of any individual application.

§ 1137.21 Commodity descriptions.

(a) *General commodities carriers.* Where a carrier is authorized to transport general commodities, restrictions having the effect of precluding the transportation of classes A and B explosives are not considered unduly restrictive and are not normally subject to removal under these procedures. Other restrictions on the commodities which a general commodities carrier may transport are considered unduly restrictive and may normally be removed under these procedures.

(b) *Named commodities or limited classes of commodities.* Where a carrier is authorized to transport one or more named commodities, the authority is considered unduly restrictive and may normally be broadened under these procedures. The same is true where a carrier is authorized to transport a limited class of commodities, except as indicated in subsection (c) of this section. Commodity classes which carry designations of three digits or more in the Standard Transportation Commodity Code are normally considered unduly narrow. Use of these procedures is normally appropriate for applications which seek—

(1) To expend such a commodity authorization to the two-digit STCC level;

(2) To replace such an authorization with a commodity description contained in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953); or,

(3) To replace such an authorization with a broader class description generally accepted by the Commission, such as commodities in bulk, commodities which because of their size or weight require special equipment, or oilfield commodities as described in *Mercer Extension-Oilfield Commodities*, 74 M.C.C. 459 (1946).

(c) *Commodities dealt in by a particular business.* Where a carrier is authorized to transport "such commodities as are dealt in by" a particular industry, such as mail order houses or retail grocery stores, the authority is not considered excessively narrow, and applications for modification should not normally be filed under these procedures.

§ 1137.22 Intermediate point service.

Certificates which authorize regular-route service and preclude service at intermediate points on the carrier's service routes, either by way of a specific restriction against performing such service or by virtue of the fact that they allow service at certain intermediate points but fail to name other points, are considered unreasonably restrictive. Use of these procedures is appropriate for seeking removal of any restriction or operating condition which inhibits service at intermediate points on a regular-route carrier's service route.

§ 1137.23 Round-trip service.

Certificates or permits which authorize service in one direction only are considered unduly restrictive. Use of these procedures is appropriate for applications which seek return movement authority limited to the same commodities the carrier is authorized to transport on the outbound trip or applications which seek to expand the round-trip authority in a manner described in § 1137.21. Implied in the round-trip commodity description is materials, equipment, and supplies in both directions.

§ 1137.24 Territorial authority.

(a) *Less than county-wide authority.* Except as indicated in paragraph (b) of this section, authorizations to serve a territory less extensive than a county (including authorizations to serve named facilities or limited in a similar manner) are considered excessively narrow. Use of these procedures is normally appropriate for applications seeking the expansion of territorial authority to include all points in the county in which the authorized service point (including any portion of the commercial zone of an authorized point) or other limited service area is located. Where an authorized service point is located within a given city as well as a county, an applicant can seek expansion of authority to the city (which includes implied authority of points in its commercial zone). Use of these procedures is also normally appropriate for applications to remove restrictions which preclude service at points or areas smaller than a county.

(b) *Service at facilities not precisely located.* Where a carrier has authority to serve a broad territory limited to service at the facilities of a specified person, company, or type of business, and where the precise location of the facilities, by reference to a city, county, or the like, is not apparent from the certificate or permit, the limitations are not considered excessively narrow, and applications for modification should not normally be filed under these procedures. These procedures can, however, be used to expand authority limited to a particular business' facilities at named points.

§ 1137.25 Miscellaneous restrictions.

Use of these procedures are normally appropriate for applications seeking the removal of the following types of restrictions, which the Commission considers to be contrary to the public interest.

(a) Restrictions which require or preclude the use of a specific type of equipment, such as "in tank vehicles" or "except in dump or hopper type equipment."

(b) Restrictions which have the effect of preventing a common carrier from participating in joint-line service with another carrier or from handling traffic having prior or subsequent movement by any mode of transportation or type of carrier.

(c) Restrictions which impose size or weight limitations, or both. This does not include restrictions relating to shipments weighing 100 pounds or less under certificates granted under the so-called "fitness only" procedures in 49 U.S.C. 10922(b)(4)(D).

(d) Restrictions which specify Canadian and Mexican destinations or origins to be served, or designate specific port of entry points which must be used.

(e) Restrictions which limit the movements of a common carrier to transportation performed on freight forwarder bills of lading.

(f) Restrictions which limit the services an irregular-route carrier can provide to traffic moving through a named point, area, or State. For example, irregular-route authority "limited to the transportation of traffic moving from, to, or through points in (a specific State)."

(g) Restrictions which the Commission has found to be inappropriate and has refused to impose in another proceeding.

§ 1137.26 Contract carriers.

Where a permit of a contract carrier limits the carrier's territorial scope of service for a named shipper, shippers, or a class of shipper, such authority is considered unduly restrictive. Use of these procedures is normally appropriate for applications seeking to broaden the territorial scope of such permits. Such applications can request authority to serve the single-named shipper, shippers, or class of shippers, "between points in the United States." The commodity description in contract permits can be broadened, and unreasonable restrictions removed, to the extent specified in Subpart C of this Section.

§ 1137.27 Limited term authority.

Certificates and permits limited to a specified duration ("term" limitation) can be modified under these procedures to the same extent as authority without a term limitation. Any modified authority approved under these rules will contain the same limitation as the original authority. These procedures cannot be used to remove the limited term condition from existing authority.

§ 1137.28 Availability of other application procedures.

The provisions of this subpart which describe as inappropriate the use of these procedures for applications seeking the elimination of certain types of restrictions or the modification of certain types of limited authorities should not be consulted as discouraging the filing of applications seeking such relief pursuant to the Commission's normal application procedures under 49 U.S.C. 10922(b) and 10923(b).

§ 1137.29 Impact of restrictions removal.

The Commission has found that, under normal circumstances, the elimination of restrictions or the modification of authorities designated in this subpart as unduly restrictive, unreasonable, excessively narrow, or contrary to the public interest will reduce the consumption of energy resources, will offer potential cost savings and improved efficiency, will be consistent with the provisions of the transportation policy set forth in 49 U.S.C. 10101(a), and will assist in providing and maintaining service to small and rural communities and small shippers.

PART 1138—OWNER-OPERATOR FOOD TRANSPORTATION

Sec.

1138.1 Governing legislation.
1138.2 Definition of owner.
1138.3 Emergency situations.
1138.4 Annual reporting requirement.

AUTHORITY: 49 U.S.C. 10922(b)(4)(E), 10923(b)(5)(A), 10762(a)(1), 10762(g), and 11145(c), and 5 U.S.C. 553.

SOURCE: 46 FR 19498, Mar. 31, 1981, unless otherwise noted.

§ 1138.1 Governing legislation.

Under 49 U.S.C. 10922(b)(4)(E) an owner-operator can obtain a certificate, and under 49 U.S.C. 10923(b)(5)(A) an owner-operator can obtain a permit, to transport food and other edible products and byproducts intended for human consumption (except alcoholic beverages and drugs) agricultural limestone and fertilizers and other soil conditioners, through a fitness only application procedure. Transportation under those provisions must be provided by the owner in his or her own vehicle (except in emergency situations), and can only be provided to transport a total tonnage equal to the amount the owner-operator transports of exempt commodities under 49 U.S.C. 10526(a)(6). Owner-operators must certify, on an annual basis, that they are in compliance with the 50-percent tonnage requirement stated above.

§ 1138.2 Definition of owner.

For purposes of this section, any person with an ownership interest of 10-percent or greater in the motor vehicle used to provide regulated transportation under 49 U.S.C. 10922(b)(4)(E) or 49 U.S.C. 10923(b)(5)(A) shall be considered an owner of the vehicle. Any owner is eligible to operate the vehicle to provide transportation services under those provisions.

§ 1138.3 Emergency situations.

For purposes of this section, emergencies shall include those situations where the need for a substitute driver cannot be anticipated by the owner-operator. Considered under this definition would be situations where the owner-operator is incapable of operating the vehicle due to illness, unanticipated personal or family difficulties demanding personal attention, or other unexpected operating conditions beyond the control of the owner-operator which prevent the owner from operating the vehicle. Planned vacations, off-duty hours for the driver required by safety regulations or other non-driving periods scheduled or mandated by law shall not be considered as emergency situations.

§ 1138.4 Annual reporting requirement.

On an annual basis, each owner-operator providing transportation under certificates to which the provisions of 49 U.S.C. 10922(b)(4)(E) apply, and permits to which the provisions of 49 U.S.C. 10923(b)(5)(A) apply, shall complete Report Form OP-143 to certify compliance with the requirement that annual tonnage transported under these provisions does not exceed the annual tonnage transported of exempt commodities under 49 U.S.C. 10526(a)(6).

ANNUAL REPORTING FORM

OWNER-OPERATOR ANNUAL REPORT
FORM OP-143

Annual Report to the Interstate Commerce Commission

(attach address label here)

_____

Owner-operator name and address, if different than shown.

_____

MC Number _____

Period covered—if this report is for less than an entire calendar year, report date operations cover.

From (month and date) _____
To (month and date) _____
Total tonnage transported under certificate or permit _____
Total tonnage transported of exempt commodities (under 49 U.S.C. 10526(a)(6)) ___

CERTIFICATIONS

(1) I certify that I am in compliance with the provisions of 49 U.S.C. 10922(b)(4)(E) (for common carriers) or 49 U.S.C. 10923(b)(5)(A) (for contract carriers), in that the tonnage transported under the certificate or permit for the period covered by this report did not exceed the exempt tonnage transported.

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(2) I certify that this report was prepared by me or under my supervision, and that I have examined it, and that the items reported on the basis of my knowledge and belief are correctly reported.

Signature ——————————————
Address (Street, City, State, Zip Code) ——
Date ——————————————
Telephone number ——————————

NOTE.—Failure to file this report may subject owner operator to proceedings leading to revocation of operating authority.

PART 1139—POLICY STATEMENT ON MOTOR CARRIER POOLING APPLICATIONS

Sec.

§ 1139.1 Scope and purpose.
§ 1139.2 Contents of a pooling application.
§ 1139.3 Processing pooling applications.

AUTHORITY: 5 U.S.C. 553 and 559 and 49 U.S.C. 10321 and 11342.

SOURCE: 46 FR 21181, Apr. 9, 1981, unless otherwise noted.

§ 1139.1 Scope and purpose.

This statement of policy on motor carrier pooling applications implements Section 20 of the Motor Carrier Act of 1980 [Pub. L. No. 96-296, 94 Stat. 793]. The Act's provisions are now contained at 49 U.S.C. 11342(b).

§ 1139.2 Contents of a pooling application.

A pooling application filed under 49 U.S.C. 11342(b) should include the following information:

(1) An identification of all the carriers who are parties to the pooling agreement;

(2) A general description of the transaction;

(3) A specific description of the operating authorities sought to be pooled;

(4) The basis to establish that the agreement is a genuine pooling arrangement (as opposed to a lease or interline arrangement);

(5) A description of what applicants consider to be the relevant transportation markets affected by the proposed agreement;

(6) The competitive routing and service alternatives that would remain if the agreement is approved, to the best of applicant's knowledge;

(7) If there is a lessening of such alternatives, an estimate of the public benefits that will accrue from approval, or new competition that will arise, which would offset such lessening;

(8) A narrative assessment of how the pooling arrangement will affect present and future competition in the area, including a description of the projected volume of traffic, the revenues, and the commodities which will be subject to the pooling agreement;

(9) Certification that rates set for traffic moving under the agreement do not violate the restrictions on collective ratemaking contained in 49 U.S.C. Subtitle IV and Commission regulations;

(10) A narrative statement as to the relative transportation importance of the pooling agreement as it would affect the public and the national transportation system;

(11) If any known non-pooling carriers authorized to transport the subject traffic are not included in the pooling arrangement explain why, and explain whether inclusion would enhance or restrain competition;

(12) A statement of the energy and environmental effects of the agreement, if any; and

(13) Certification by applicant, or its representatives, that the representations made in the application are, to the best of his/her knowledge and belief, true and complete.

As appendices, applicants must submit: (A) A copy of the pooling agreement; (B) a copy of the specific operating authority of each carrier which is the subject of the pooling agreement; and (C) a caption summary (for FEDERAL REGISTER publication) of the pooling transaction sought to be approved.

§ 1139.3 Processing pooling applications.

After the pooling application is received (not less than 50 days before the effective date specified in the pooling agreement), the Commission will either reject it or determine initially whether the pooling agreement is of major transportation importance and whether there is a substantial likelihood that the pooling agreement will unduly restrain competition. If nei-

ther of these two factors is present, the application will be granted without further hearing. Where either factor is found to exist, the application will be published in the FEDERAL REGISTER using the caption summary filed with the application, and a hearing will be scheduled (normally to receive written verified statements) to consider the issues further. In this second phase of the proceeding, the Commission will consider whether the pooling agreement would be in the interest of better service to the public or of economy of operation and whether it will unduly restrain competition.

PARTS 1140–1149—SPECIAL PROCEDURES—WATER CARRIERS

INTRODUCTORY NOTE: Rules governing extension of temporary operating authority or approvals for water carriers are contained in Part 1101 of this chapter.

PART 1140—EXTENSIONS OF OPERATIONS

Sec.
1140.1 Applications for certificates.
1140.2 Proof of convenience and necessity.

CROSS REFERENCE: See also Special Rule 247 of the Special Rules of Practice (§ 1100.247 of this Chapter).

§ 1140.1 Applications for certificates.

(a) A common carrier subject to Part III of the Interstate Commerce Act must obtain a certificate from the Commission covering any extension of services, pursuant to the proviso of section 309(d) of said act, over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates.

(b) Applications for such certificates shall be in the form provided for in § 1003.2 of this chapter and must be filed with the Commission not later than the date of the filing of tariffs establishing rates and charges for transportation of passengers or property over that portion of the waterway embraced in such application and in no event later than the date on which the extended operations are instituted.

(54 Stat. 933, 941; 49 U.S.C. 904, 909)

[32 FR 20119, Dec. 20, 1967, as amended at 38 FR 26205, Sept. 19, 1973]

§ 1140.2 Proof of convenience and necessity.

(a) No common carrier subject to Part III of the Interstate Commerce Act shall institute such extended services after the expiration of 120 days, from the date on which the uncompleted portions of such projects are open for navigation without first obtaining a certificate from the Commission based upon proof of public convenience and necessity.

(b) If extended services are instituted within 120 days after the uncompleted portions of such projects are open for navigation and an application is filed as provided in § 1140.1, a certificate covering such extended services will be issued without proof of public convenience and necessity (proof of public convenience and necessity will be required in connection with applications filed for the institution of such extended services after the expiration of such 120-day period).

(54 Stat. 933, 941; 49 U.S.C. 904, 909)

[32 FR 20119, Dec. 20, 1967]

PART 1141—TRANSFERS OF CERTIFICATES AND PERMITS TO OPERATE

Sec.
1141.1 Transfers approved only upon application.
1141.2 Transfers effected in section 5(2) proceedings.
1141.3 Transfers not effected in section 5(2) proceedings.
1141.4 Required exhibits.
1141.5 Form and style of application.
1141.6 Procedure.
1141.7 Transfers by fiduciaries.
1141.8 Leases and contracts to operate.
1141.9 Abandoned or suspended operations.
1141.10 Attempted transfers.

AUTHORITY: Secs. 5, 12, 24 Stat. 380, as amended, 383, as amended; 49 U.S.C. 5, 12, unless otherwise noted.

SOURCE: 32 FR 20119, Dec. 20, 1967, unless otherwise noted.

§ 1141.1 Transfers approved only upon application.

An order approving a transfer will be entered only upon the joint applica-

tion of the person to whom the certificate or permit was issued, or such person's duly qualified legal representative, and of the person to whom it is proposed to transfer the certificate or permit.

§ 1141.2 Transfers effected in section 5(2) proceedings.

If the person to whom it is proposed to transfer a certificate or permit is a carrier as defined in section 5(13) of the Interstate Commerce Act and the proposed transfer is to be made in connection with any transaction requiring approval and authorization of the Commission under section 5(2) of the act, the parties to the transaction may join in the application for such approval and authorization and request approval of the proposed transfer in connection with such other transaction. Under such circumstances the application shall be made pursuant to the special instructions governing applications under section 5(2) of the act and, in addition to the information required by such special instructions, the transferee shall furnish the information required by paragraphs (n) and (o) of § 1141.3.

§ 1141.3 Transfers not effected in section 5(2) proceedings.

If the person to whom it is proposed to transfer a certificate or permit is not a carrier as defined in section 5(13) of the act, or the proposed transfer is not to be made in connection with any transaction requiring approval and authorization of the Commission under section 5(2) of the act, the application to transfer a certificate or permit shall show, in the order indicated, the following:

(a) Full and correct names of the transferor.

(b) Business address of the transferor (street, number, city, county, State).

(c) Title, date, and docket number of certificate or permit to be transferred.

(d) Full and correct name of transferee.

(e) Business address of transferee (street number, city, county, State).

(f) Whether transferee is a corporation, partnership, association or individual, and (1) if transferee is a corporation, the Government, State, or Territory under the laws of which transferee is organized, and, if incorporated under the laws of, or authorized to operate in, more than one State, the facts in regard thereto; (2) if a corporation or association, the names and addresses of the directors and officers; (3) if a partnership, the names and addresses of the partners; and (4) if an association, partnership or individual, firm or trade name under which operations are conducted.

(g) Whether the transferee is a carrier as defined in section 5(13) of the Interstate Commerce Act, or controls, is controlled by, or is under common control or otherwise affiliated with such a carrier. (See appendix for definition of "affiliated" as used in section 5 of the act.)

(h) All routes, both regular and irregular, over which transferor is authorized by its certificate or permit to operate; whether transferor was operating over all these routes on the date of the application; and, if not, the route or routes over which operations had ceased and the date on which operations ceased, with a full explanation of the circumstances causing cessation of operations.

(i) Vessels and other transportation facilities, showing for each vessel the name, and if documented, the official number, owned, leased or controlled and/or operated by the transferor and by the transferee on the date of the application, showing for each the number and description of vessels and the nature of other facilities.

(j) Whether the proposed transfer of the certificate or permit is part of a transaction involving the transfer of vessels or other facilities from the transferor to the transferee; and if so, (1) the nature of the transaction, whether a sale, lease or operating contract, and (2) a description of the vessels and facilities to be transferred.

(k) If transferee does not propose to acquire vessels or other transportation facilities from the transferor, and does not own or lease such vessels or facilities, a statement showing (1) the vessels or facilities the transferee proposes to acquire for continuing operation under the certificate or permit, (2) the method of such acquisition,

whether by purchase, lease or operating contract, and (3) the name, address and carrier status of the owner of such vessels and facilities.

(l) The purchase price, rental, or other consideration to be paid for vessels and other facilities which the transferee proposes to acquire.

(m) The transferee's general plan of financing its requirements for vessels and other transportation facilities.

(n) Experience of the transferee, and of its principal officers and operating personnel in transporting persons or property by water for hire.

(o) Any additional information to show that the proposed transferee is fit, willing, and able properly to perform the service authorized by the certificate or permit sought to be transferred and to conform to the provisions of Part III of the Interstate Commerce Act and the requirements, rules and regulations of the Commission thereunder.

(p) Reference to action by stockholders or directors of applicant, if a corporation, by directors or members of applicant, if an association, and by the court having jurisdiction over applicant, if a trustee, receiver, or other fiduciary, authorizing the proposed transaction and the making and filing of the application, giving dates and places of meetings of stockholders, directors and associate members, and the date of the court's order.

(q) The name, title, and postoffice address of counsel or officer to whom correspondence in regard to the application is to be addressed.

§ 1141.4 Required exhibits.

The following exhibits shall be attached to and made a part of the application:

(a) As Exhibit 1, copy of each resolution or order to which reference is made in response to the requirements of paragraph (p) of § 1141.3.

(b) As Exhibit 2, copy of all contracts or other written instruments entered into, or proposed to be entered into, pertaining to the proposed transfer and to the acquisition of vessels and other transportation facilities to be used in the proposed operations of the transferee.

(c) As Exhibit 3, general balance sheet statement of the transferee as of the close of the last preceding calendar year, and as of the latest available date of the current calendar year, or if transferee is an individual or a newly organized corporation, association or partnership, a statement of resources and liabilities with which the transferee proposes to begin operation pursuant to the certificate or permit.

(d) As Exhibit 4, income statement of the transferee for the last preceding calendar year and, separately, for the current calendar year to the last available date, or if the transferee is an individual or a newly organized corporation, association or partnership, an estimate of revenues, expenses, and income for the first three years of the proposed operation, and a statement showing the basis of such estimate.

(e) As Exhibit 5, a general or key map indicating clearly in colors, or otherwise, on a suitable scale, the line or lines, route or routes, and ports or points, involved in the proposed transfer. Three extra copies of the map should be submitted, unbound, for the use of the Commission.

§ 1141.5 Form and style of application.

The application and exhibits shall conform with Rule 15 of the General Rules of Practice (§ 1100.15 of this Chapter).

§ 1141.6 Procedure.

(a) The original application shall be signed in ink by the transferor and the transferee, if individuals, by all partners, if either transferor or transferee is a partnership, and, if either is a corporation, an association or other similar form of organization, by its president, vice president, auditor, comptroller or other executive officer having knowledge of the matters therein contained and duly designated for that purpose by such applicant, and shall be made under oath. The application shall show that any affiant acting for the transferor or transferee is duly authorized by such applicant to verify and file the same.

(b) There shall be filed with the Secretary of the Commission, Washington, D.C. 20423, the original applica-

tion and four copies thereof for the use of the Commission and one copy shall be delivered in person, or by mail, to the Governor of each State in which any port of point served by the transferor is located. Proof of such delivery shall be made as a part of the original application filed with the Commission. Each copy shall conform in all respects to the original and shall be complete in itself, except that the signature in the copies may be stamped or typed and the notarial seal omitted.

(c) The notice to the public of the filing of an application and the filing of protests will be the same as provided under § 1132.2 of this chapter; and petitions seeking reconsideration of an order entered pursuant to this part will be handled as provided in Rule 225 of the general rules of practice, and § 1132.4 as set forth in this chapter.

(d) The Commission, if it shall consider it necessary in order to determine whether the findings required for the entry of an order approving and authorizing a transfer may properly be made, will order a hearing upon the application, giving notice thereof to the applicants and such others as are interested in the proposed transfer.

(e) Within 10 days after the execution of any instrument or instruments whereby property together with operating rights under any certificate or permit is transferred with the approval and authorization of the Commission under the provisions of section 5(2) of the act, and within 10 days after the transfer or assignment of a certificate or permit not effected in section 5(2) proceedings, the transferee shall file with the Commission, in duplicate, in the form in which they were executed, verified copies of such instrument, or instruments, or, in the absence of any such instrument, of the endorsement or other written evidence of the transfer or assignment. Upon receipt of such copies an appropriate certificate, or certificates, permit, or permits, superseding the certificate or permit transferred will be issued.

(Secs. 17, 304, 312, 24 Stat. 385, as amended, 54 Stat. 933, 944, 49 U.S.C. 17, 904, 912)

[32 FR 20119, Dec. 20, 1967, as amended at 41 FR 1486, Jan. 8, 1976]

§ 1141.7 Transfers by fiduciaries.

(a) The temporary continuance of water-carrier operations without prior compliance with the provisions of the foregoing rules and regulations will be recognized as justified by the public interest in cases in which administrators and executors of deceased persons formerly operating as carriers, guardians of incapacitated persons formerly operating as carriers, a surviving partner or surviving partners collectively of dissolved partnerships, or trustees, receivers, conservators, assignees or other such persons who are authorized by law to collect and preserve property of financially disabled carriers, desire to continue the operations of the carriers whom they succeed in interest.

(b) Immediately upon any such succession, and in any event not more than 10 days thereafter, the successor shall give notice of the succession to the Secretary of the Interstate Commerce Commission, Washington, D.C., stating the names of the water carrier and of the successor, the date of the succession, the circumstances causing the succession, whether there has been any discontinuance of operations and, if so, for what period, and, if the representative capacity of the successor involves appointment by a judicial proceeding, enclosing a certified copy of such appointment.

(c) Such successors may continue to operate under the certificate or permit of the water carrier which they succeeded so long as they act in a temporary and representative capacity or until the Commission shall otherwise order. All transfers by successors to other persons shall be subject to the foregoing sections of these rules and regulations.

(d) Such successors shall operate in the name of the prior holder of the certificate or permit followed by the name of the successor and a designation of his capacity. The use of such name on all papers filed in accordance with the requirements of Part III of the Interstate Commerce Act, or the rules and regulations prescribed thereunder, shall be sufficient compliance with any requirement, rule, or regula-

tion that such papers be filed in the name of the holder of a certificate or permit.

§ 1141.8 Leases and contracts to operate.

In addition to the showing required in § 1141.3 and § 1141.4, applicants who seek approval of a transfer of a certificate or permit for a limited period, whether by lease, operating contract or otherwise, shall agree in writing that such certificate or permit shall revert to the transferor at the expiration of the period for which the transfer is sought, or upon discontinuance of operation thereunder by the transferee at any time prior to the expiration of such period. In such case of reversion, the transferor shall give notice of that fact to the Commission, as provided in § 1141.7(b).

§ 1141.9 Abandoned or suspended operations.

The transfer of any certificate or permit under which operations are not being conducted at the time of the proposed transfer will be approved only upon a showing that the suspension of operations was caused by circumstances over which the holder of the certificate or permit had no control, and that the water-carrier operations authorized under the certificate or permit sought to be transferred will be consistent with the public interest.

§ 1141.10 Attempted transfers.

No attempted transfer of any certificate or permit, whether by means of an attempted pledge of such certificate or permit, or by any action purporting to foreclose a pledge or lease against such certificate or permit, or by any attempt to levy execution against such certificate or permit in satisfaction of any judgment or claim against the holder thereof, shall become effective except upon full compliance with the rules and regulations in this part and until after the Interstate Commerce Commission has approved such transfer upon application as herein provided.

PARTS 1150–1159—SPECIAL PROCEDURES—FREIGHT FORWARDERS

PART 1150—[RESERVED]

PART 1151—TRANSFERS OF OPERATING RIGHTS (PERMITS)

Sec.

1151.1 Definitions and general provisions.
1151.2 Applications to transfer.
1151.3 Required exhibits.
1151.4 Form and style of application.
1151.5 Procedure.
1151.6 Transfers by fiduciaries.
1151.7 Leases and contracts to operate.

AUTHORITY: 56 Stat. 285, 291; 49 U.S.C. 1003, 1010, unless otherwise noted.

SOURCE: 32 FR 20121, Dec. 20, 1967, unless otherwise noted.

§ 1151.1 Definitions and general provisions.

(a) *Definitions*—(1) *Transfer.* The term "transfer", as used herein, shall include all transactions, whether by purchase, lease, contract to operate, or otherwise, whereby an operating right as a freight forwarder arising out of the Interstate Commerce Act is acquired by one person from another.

(2) *Operating rights.* The term "operating right" or "operating rights", as used herein, shall include the right to engage in service as a freight forwarder in interstate commerce within a specified territory or from and to specified territories, as authorized by a permit issued by this Commission under the provisions of the Interstate Commerce Act, or as authorized by those provisions of said act under which a freight forwarder may continue to operate pending consideration of its application to the Commission for a permit.

(b) *General provisions*—(1) *Division of operating rights.* An operating right may be divided as to territories and part thereof transferred, provided such territories are clearly severable and the division thereof does not permit the creation of duplicate operating rights. No division of operating rights will be approved unless it appears to the satisfaction of the Commission that the part of the operating rights sought to be transferred is, be-

cause of a difference in the nature or type of the service rendered, clearly distinguishable and severable from the remaining operating rights.

(2) *Attempted transfers.* No attempted transfer of an operating right shall be effective except upon full compliance with the rules and regulations in this part and until after the Commission has approved such transfer as herein provided. A transfer of operating rights by means of a pledge of such rights or by the foreclosure of a pledge upon or lien against such rights, or by a levy of execution in satisfaction of any judgment or claim against the holder thereof, shall not be effective without compliance with the rules and regulations in this part and the prior approval of the Commission.

§ 1151.2 Applications to transfer.

Applications for approval of the transfer of operating rights shall show, in the order indicated, the following:

(a) Full and correct name of the transferor.

(b) Business address of the transferor (street, number, city, county, State).

(c) Title, date, and docket number of operating right to be transferred.

(d) Full and correct name of the transferee.

(e) Business address of transferee (street, number, city, county, State).

(f) Whether transferee is a corporation, partnership, association, or individual, and (1) if transferee is a corporation, the Government, State, or Territory under the laws of which transferee is organized, and if incorporated under the laws of, or authorized to operate in, more than one State, the facts in regard thereto; (2) if a corporation or association, the names and addresses of the directors and officers; (3) if a partnership, the names and addresses of the partners; and (4) if an association, partnership, or individual, the firm or trade name under which operations are conducted.

(g) Whether the transferee is a freight forwarder, or is a person controlling, controlled by, or under common control or otherwise affiliated with a freight forwarder, or is a carrier subject to Part I, II, or III of the Interstate Commerce Act, or is a director, officer, employee, or agent of such carrier, or controls, is controlled by, or is under common control or otherwise affiliated with such a carrier; or is a person whose principal business is that of buying or selling or buying and selling articles or commodities and whose business operations are of such a character that services of a freight forwarder or forwarders are commonly used in connection with the transportation of such articles or commodities, or is a person controlling, controlled by, or under common control with such person; and, if so, a full explanation.

(h) All territories within which or between which transferor is authorized to operate; whether transferor was operating within or between all these territories on the date of the application; and, if not, the territories within or between which operations had ceased and the date on which operations ceased, with a full explanation of the circumstances causing cessation of operations.

(i) Experience of the transferee and of its principal officers and operating personnel in performing freight forwarder services; whether the proposed transfer would affect the interests of the employees of the transferor, and, if so, the manner in which their interests would be affected.

(j) Any additional information to show that the proposed transferee is ready, able, and willing properly to perform the service authorized by the operating right sought to be transferred and to conform to the provisions of Part IV of the Interstate Commerce Act and the requirements, rules, and regulations of the Commission thereunder.

(k) Reference to action by stockholders or directors of applicant, if a corporation, by directors or members of applicant, if an association, or by the court having jurisdiction over applicant, if a trustee, receiver, or other fiduciary, authorizing the proposed transaction and the making and filing of the application, giving dates and places of meetings of stockholders, directors, or associate members and the date of the court's order.

(l) Whether the proposed transfer of operating rights is part of a transaction involving the transfer of freight forwarder facilities from the transferor to the transferee; and, if so, (1) the nature of the transaction, whether a sale, lease, or operating contract, and (2) a description of the physical facilities to be transferred.

(m) The name, title, and post office address of counsel or officer to whom correspondence in regard to the application is to be addressed.

§ 1151.3 Required exhibits.

The following exhibits shall be attached to and made a part of the application:

(a) As exhibit 1, copy of each resolution or order to which reference is made in response to the requirements of paragraph (k) of § 1151.2.

(b) As exhibit 2, copy of contracts or other written instruments entered into, or proposed to be entered into, pertaining to the proposed transfer.

(c) As exhibit 3, general balance sheet statement of the transferee as of the close of the last preceding calendar year, and as of the latest available date of the current calendar year, or if transferee is an individual or a newly organized corporation, association or partnership, a statement of resources and liabilities with which the transferee proposes to begin operation pursuant to the operating right.

(d) As exhibit 4, income statement of the transferee for the last preceding year and, separately, for the current calendar year to the last available date, or if the transferee is an individual or a newly organized corporation, association, or partnership, an estimate of revenues, expenses, and income for the first three years of the proposed operation and a statement showing the basis of such estimate.

§ 1151.4 Form and style of application.

The application and exhibits shall conform with Rule 15 of the Commission's general rules of practice (§ 1100.15 of this chapter).

§ 1151.5 Procedure.

(a) The original application shall be signed in ink by the transferor and the transferee, if individuals; by all partners if either transferee or transferor is a partnership; and, if either is a corporation, an association, or other similar form of organization, by its president, vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein contained and duly designated for that purpose by such applicant; and shall be made under oath. The application shall show that any affiant acting for the transferor or transferee is duly authorized by such applicant to verify and file the same.

(b) There shall be filed with the Secretary of the Commission, Washington, D.C., the original application and four copies thereof for the use of the commission and one copy shall be delivered, in person or by mail, to the Governor of each State in which any point served by the transferor is located. Proof of such delivery shall be made as a part of the original application filed with the Commission. Each copy shall conform in all respects to the original and shall be complete in itself, except that the signature in the copies may be stamped or typed and the notarial seal omitted.

(c) The Notice to the public of the filing of an application, and the filing of protests will be the same as provided under § 1132.2 of this chapter.

(d) Except as provided in § 1151.1 (b), the proposed transfer described in any such application shall be approved if it appears that such transfer, if approved, will be consistent with the public interest and the national transportation policy declared in the Interstate Commerce Act, will not result in unlawful ownership or control of a freight forwarder and will not adversely affect the employees of the transferor; and that the proposed transferee is ready, able, and willing properly to perform the service authorized by the operating rights sought to be transferred, and to conform to the provisions of the Interstate Commerce Act and the requirements, rules, and regulations of the Commission thereunder. Otherwise the application shall be denied.

(e)(1) If a petition is timely filed, seeking reconsideration or other relief from an order entered under this part, and such order has not yet become ef-

fective, then, pursuant to section 17(8) of the Interstate Commerce Act, the effective date will be postponed pending disposition of the petition.

(2) Any petition, seeking reconsideration of, or other relief from an order entered subject to this part, must specify with particularity the alleged errors contained in the said order, and shall cite in all cases the particular section or sections of the Act, the Commission's general rules of practice (Part 1100 of this chapter), and the rules and regulations governing the transfers of operating rights (Part 1151 of this chapter), which are involved, and the arguments based thereon, which petitioner believes warrant a conclusion different from that set forth in the said order. The petition may be rejected for failure to cite the particular section relied upon.

(3) Petitions seeking reconsideration of an order of the Motor Carrier Board will be governed by the special rules of practice, set forth in Rule 225 of the Commission's general rules of practice (49 CFR 1100.225).

(f) Within ten days after the transfer of an operating right the transferee shall file with the Commission in duplicate, in the form in which they are executed, verified copies of such instrument or instruments, or, in the absence of any such instrument, of the endorsement or other written evidence of the transfer. Upon receipt of such copies an appropriate permit superseding the permit transferred will be issued in transactions including the transfer of a permit issued by this Commission.

(Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, 49 U.S.C. 12, 17)

[32 FR 20121, Dec. 20, 1967, as amended at 41 FR 1486, Jan. 8, 1976]

§ 1151.6 Transfers by fiduciaries.

(a) The temporary continuance of freight forwarder operations without prior compliance with the provisions of the foregoing rules and regulations will be recognized as justified by the public interest in cases in which administrators or executors of deceased persons formerly engaged in service as freight forwarders, guardians of incapacitated persons formerly engaged in service as freight forwarders, a surviving partner or surviving partners collectively of dissolved partnerships, or trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve property of financially disabled freight forwarders, desire to continue the operations of the freight forwarders whom they succeed in interest.

(b) Immediately upon any such succession, and in any event not more than ten days thereafter, the successor shall give notice of the succession to the Secretary of the Commission, Washington, D.C., stating the names of the freight forwarder and of the successor, the date of the succession, and the circumstances causing the succession, whether there has been any discontinuance of operations and, if so, for what period, and, if the representative capacity of the successors involves appointment by a judicial proceeding, enclosing a certified copy of such appointment.

(c) Such successors may continue to operate under the authority of the freight forwarder which they succeed so long as they act in a temporary and representative capacity or until the Commission shall otherwise order. All transfers by successors to other persons shall be subject to other sections of the rules and regulations in this part.

(d) Such successors shall operate in the name of the prior holder of the permit or operating right, followed by the name of the successor and a designation of his capacity. The use of such name on all papers filed in accordance with the requirements of Part IV of the Interstate Commerce Act, or the rules and regulations prescribed thereunder, shall be sufficient compliance with any requirement, rule, or regulation that such papers be filed in the name of the holder of the operating rights.

§ 1151.7 Leases and contracts to operate.

In addition to the showing required in §§ 1151.2 and 1151.3, applicants who seek approval of a transfer of an operating right for a limited period, whether by lease, operating contract, or otherwise, shall agree in writing that such operating right shall revert to the

transferor at the expiration of the period for which the transfer is sought, or upon discontinuance of operation thereunder by the transferee at any time prior to the expiration of such period. In such case of reversion the transferor shall give notice of that fact to the Commission as provided in § 1151.6(b).

PARTS 1152–1199 [RESERVED]

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FINDING AIDS

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